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INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR

INTERNATIONAL LAW

APPLIED TO THE

RUSSO-JAPANESE WAR

WITH

THE DECISIONS OF THE JAPANESE PRIZE COURTS

BY

SAKUYÉ TAKAHASHI

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PREFACE.

THE Russo-Japanese War is significant as one of the most important events the world ever witnessed. Especially is it an epoch-making event in the evolution of International Law. This war, in fact, has afforded innumerable cases that illustrate almost every article of The Geneva and The Hague Conventions relating to Laws and Customs of Land and Naval Warfare, and, furthermore, has presented cases without precedents, suggesting the desirability of a thorough revision of the present laws.

International Law may be studied in two different ways; namely, the inductive method, which discovers principles from accumulated facts; or the deductive method, which, after establishing certain principles, collects facts necessary to maintain them. In my present treatise I have made use of both methods.

Readers are cautioned against regarding this work as being too descriptive. It has been my aim to avoid theoretical controversies on all principles generally agreed to be correct. In such cases I have merely quoted the facts relating to these principles, and intentionally refrained from making many footnotes reciting authorities.

Every specialist on International Law has been called upon to express his views, so as to aid as much as possible in the solution of such problems as the establishment of hospital liners in the blockaded ports, the disarmament of belligerent warships and internment of belligerents in neutral ports, the destruction of captured merchantmen, the relation of the support of prisoners to their employments, etc., all of which questions have heretofore been either inadequately treated or not referred to. I have never hesitated to publish my personal opinions on these problems, expecting that they might be freely criticised.

On the commencement of the war, Dr. Terao, Dr. Namamura, and myself—three of the seven advocates for war—were commissioned by the Department for Foreign Affairs to make certain investigations, and to answer various important questions during the course of hostilities. One year's experience in such a position, together with three years of study on the subject, has enabled me to become fully acquainted with every detail of the international contest, and it is not from a desire for personal glory, but from a sense of duty that I have compiled the present treatise.

Some years ago I published a volume entitled "Cases on International Law during the Chino-Japanese War." This was after I had served as legal adviser to the Commander-in-Chief of the Japanese Fleet during that conflict. In the former treatise I refrained from discussing matters pertaining to the war on land, because I was not in a position to do the work thoroughly. In the present volume I have included all matters, both naval and military, which occurred during the late war, for my official position enabled me to study both branches. Now I am permitted to publish what I believe will be a material aid to the study of Diplomacy and International Law.

I hereby acknowledge the fact that I am under obligation to Messrs. W. M. Vories, M. S. Vail, P. B. Waterhouse, H. B. Schwarz, Ch. E. McPeek, and F. A. Mosher for kind assistance in correcting my English and in reading the proof-sheets. Many of the official documents which appeared in the *Official Gazette*, Tokyo, at the time, and which have been incorporated in this treatise, were kindly translated by Messrs. H. Kotani, Y. Nakagawa, T. Chiba, S. Henmi, and so on.

SAKUYÉ TAKAHASHI.

On the 10th of April, 1908,
the 325th Anniversary
of Hugo Grotius' birthday.

CONTENTS.

PART I.

THE OUTBREAK OF WAR, AND ITS EFFECTS.

CHAPTER I.

THE OUTBREAK OF WAR.

		PAGE
Sect. I.	General statements	1
Sect. II.	The Russian protests and the Japanese answer . .	9
Sect. III.	A personal observation on the Russian declaration .	14
	(1) Data concerning the outbreak of the war. (2) Hostilities need no precursive notice. (3) On the Russian manifesto concerning Korea.	

CHAPTER II.

THE PROTECTION OF SUBJECTS OF ONE BELLIGERENT AND THEIR PROPERTY WITHIN THE TERRITORY OF THE OTHER, ON THE OUTBREAK OF WAR.

Sect. I.	The days of grace allowed the enemy's subjects . .	26
	(1) Japanese attitude. (2) The Russian attitude.	
Sect. II.	The protection of Catholics and Catholic Missionary Institutions in the Far East by the Japanese Government	38
Sect. III.	The American protection of Japanese in Russian territories	42
	(1) The withdrawal of the Japanese from Vladivostock. (2) From Port Arthur. (3) From Odessa. (4) Through Europe.	

CHAPTER III.

DAYS OF GRACE ALLOWED THE ENEMY'S VESSELS AT THE OUTBREAK OF WAR 59

CHAPTER IV.

PAGE

EFFECT OF THE OUTBREAK OF WAR ON FOREIGNERS IN THE BELLIGERENT STATES; WAR TAXES ON FOREIGNERS . . 70

CHAPTER V.

TRADING WITH THE ENEMY, AND PROHIBITION OF THE EXPORTATION OF GOODS SUITABLE FOR WARLIKE PURPOSES . . 82

PART II.

LAWS AND CUSTOMS OF LAND WARFARE.

CHAPTER I.

COMBATANTS.

Qualifications of a combatant; The Japanese principle during the Chino-Japanese War, and the Russo-Japanese War; Russian principles 89

CHAPTER II.

PRISONERS OF WAR.

Sect. I.	Treatment of Prisoners. (1) Personal investigation by Mr. Smith, U. S. Vice-Consul at Moskow. (2) Treatment of the Russian prisoners in Japan.	94
Sect. II.	Parole necessary for free outdoor exercise	107
Sect. III.	Prison barracks	113
Sect. IV.	Bureau of information for prisoners	114
Sect. V.	Restoration of personal property left by Russian soldiers	118
Sect. VI.	Postal regulations	122
Sect. VII.	Support and pay of prisoners of war	123
Sect. VIII.	Labour of prisoners of war	124
Sect. IX.	Wearing of swords by prisoners	127
Sect. X.	Prisoner's offences	129
Sect. XI.	The sick, wounded and deceased	132
Sect. XII.	Crews of merchantmen	138
Sect. XIII.	Russians in medical service, non-combatants and deceased	140
Sect. XIV.	Delivering of prisoners of war	142
Sect. XV.	Prisoners and religion	146

CHAPTER III.

The Treatment of the Killed.

PAGE

Baron Suyematsu's article on the subject. Regulations for clearing the field after an engagement, and for burying those who have been killed, or have died of disease 148

CHAPTER IV.

Means of Injuring the Enemy.

Sect. I. False accusations of the Russian Government against the Japanese Army refuted 155

(1) Concerning the Japanese soldiers firing upon a Russian train flying the Red Cross flag near Pulantien. (2) The false accusation of the Japanese troops' firing upon the Russian Red Cross flag. (3) The false accusation of the Japanese troops' firing at the Russian Red Cross Hospital in Port Arthur. (4) The report that Japanese soldiers abused the Red Cross flag in a conflict near Chong-ju. (5) The false accusation of a Russian surgeon treated unjustly at Tashichiao. (6) Slander on Japan's treatment of Russians killed and wounded.

Sect. II. Russian breaches of the rules of war 163

(1) Cases of Russians' firing at the Japanese field hospitals. (2) Russian outrages. (3) The use of dumdum bullets. (4) The wearing of Chinese costumes by the Russian Army; an example of Russian stratagem. (5) Violation of International Law by the Russian Army in Sakhalin.

CHAPTER V.

Spies.

Sect. I. Spy 185

(1) The case of Casimil Miaczyonski. (2) Chinese spies. (a) The case of Chen, the magistrate of Liao-yang and Wang the ex-magistrate of Haicheng. (b) The case of the president of the bureau of communication at Mukden and fifteen other officers. (c) The case of the magistrate of Kang-ping prefectory. (d) A Chinese spy using doves. (e) Case of Chang.

Sect. II. Violation of regulations concerning the protection of military secrets 190

CHAPTER VI.

Siege and Bombardments.

		PAGE
Sect. I.	Alleged bombardment of hospitals in Port Arthur	195
Sect. II.	Non-combatants in Port Arthur	203
Sect. III.	The German officers from Port Arthur	206

CHAPTER VII.

The Capitulation.

Sect. I.	General Stoessel's proposal to surrender	209
Sect. II.	Stoessel communicates with the Czar	210
Sect. III.	Terms of the capitulation	211
Sect. IV.	The transfer of the forts	215
Sect. V.	Russian prisoners at Port Arthur	218

CHAPTER VIII.

Armistices.

Sect. I.	The protocol of the armistice	219
Sect. II.	The armistice in Manchuria	220
Sect. III.	The armistice at Port Arthur	221
Sect. IV.	The naval protocol of the armistice	222
Sect. V.	The armistice in North Korea	224

CHAPTER IX.

The Occupation of Sakhalin.

Sect. I.	Premeditated plan for the occupation of Sakhalin Island	225
Sect. II.	Surrender of the Sakhalin Army	227
Sect. III.	The military administration system Instructions to military administration officers.	229
Sect. IV.	Treatment of the population of the occupied territory (1) Russian civil officers, their families and the families of military officers at Sakhalin. (2) Russian subjects. (3) Exiles. (a) Political exiles. (b) Criminals. (4) Priests.	231
Sect. V.	Public and private properties at Sakhalin (1) Forests. (2) Coal mines. (3) Petroleum fields.	239
Sect. VI.	Application of The Hague Convention, Article LVI (1) Protection of orphanages. (2) Protection of charity hospitals. (3) Nowmihailovskoe lunatic asylum. (4) Churches. (5) Schools. (6) Museums. (7) Protection of the rights of the inhabitants of Sakhalin Island.	244

CHAPTER X.

The Occupation of Manchuria.

PAGE

Sect. I. Principles and regulations concerning the administration of the occupied territory in Manchuria. The pre-arrangement of the administration of the occupied territory in Manchuria 250

Sect. II. The results of administration in the occupied territory of Manchuria 257

Sect. III. Requisitions and booty 260

Sect. IV. Private properties of Russian inhabitants . . . 262

Sect. V. Protection of historical and religious buildings, hospitals and others 263

Sect. VI. The protection of subjects of the other Powers in Manchuria 266

(A) An example relating to American citizens. (B) An example relating to British subjects. (C) An example relating to Austrian subjects. (D) An example relating to Italian subjects. (E) An example relating to Hollanders. (F) Protection of the Chinese.

PART III.

LAWS OF NAVAL WARFARE.

CHAPTER I.

The Sinking of Merchantmen.

Sect. I. The sinking of Japanese vessels 284

(1) The sinking of the *Nakonoura Maru*. (2) The sinking of the *Goyo Maru* and the *Haginoura Maru*. (3) The sinking of the *Kinshiu Maru*. (4) The Okinoshima disaster. (5) The sinking of the *Seisho Maru* and the *Koun Maru*. (6) The sinking of the *Jizai Maru, Fukuju Maru, Takashima Maru, Kaho Maru* and *Hokusei Maru* No. 2. (7) The sinking of the Japanese sailing ship *Hachiman Maru* No. 3 and *Hokusei Maru* No. 1. (8) The sinking of the *Keisho Maru*. (9) The sinking of the *Han-yei Maru*.

Sect. II. The sinking of neutral ships 310

(1) The sinking of the *Knight Commander*. (2) The sinking of the German *S. S. Thea*. (3) The *Hipsang* incident. (4) Disaster to merchantmen inflicted by

PAGE

the descent of the Baltic fleet. (a) The sinking of the *St. Kilda*. (b) The sinking of the *Ikona*. (c) The destruction of the *Old Hamia*. (d) The sinking of the *Tetatos*.

Sect. III. An observation on the destruction of merchantmen . . 310

CHAPTER II.

INCIDENTS WITH BEARING ON PRIZE LAW.

Sect. I. The *Daijin Maru* incident 337
Sect. II. The *Prometheus* case 340
Sect. III. The ships for scientific exploration towards the North Pole 353
Sect. IV. The *Independent* affair 354
Sect. V. Claims for damages caused by capture 355
(1) The *Crusader*. (2) The *Eastry*.

CHAPTER III.

THE BLOCKADE OF THE LIAOTUNG PENINSULA.

Sect. I. Details of the blockade 359
Sect. II. Medicines and medical stuffs destined for Port Arthur 361
Sect. III. On the establishment of a hospital liner . . . 370
Sect. IV. Blockade runners 371
Sect. V. A legal problem involved in the blockade of Lyao-Tung 373

CHAPTER IV.

CONCERNING FLOATING HOSPITALS.

Sect. I. Negotiations about Japanese floating hospitals . . 375
Sect. II. Opinions of the master and chief physicians of hospital vessels, in question relating to The Hague Convention for the application of The Geneva Convention to maritime warfare 376
(1) Reprehensibility of the omission of Article X. (2) How to make a hospital ship recognisable by night. (3) Is there any need of colouring a neutral hospital-ship otherwise than green or red? (4) Is it justifiable for a hospital-ship or a ship not a hospital to rescue the sick and wounded by venturing, during the battle, into the place of combat? Or is such conduct to be allowed only after the battle? (5) The disposal of the wounded and sick received on a neutral ship.

CHAPTER V.

PAGE

War Correspondents of Foreign Newspapers and Correspondents' Ships 386

CHAPTER VI.

The Coast Bombardment.

Bombardments of Kaiping and Kinchow; Bombardments of Kaiping and neighbourhood; The San-shan Island affair . . 407

PART IV.

NEUTRALITY.

CHAPTER I.

Russian Warships in Neutral Ports.

Sect. I. Russian warships at Shanghai 418
(1) The *Mandjur* affair. (2) The *Askold* and the *Grozovoi* at Shanghai. (3) The *Bodri* and the Russian transports.

Sect. II. The Russian warships at Chefoo 437
(1) The *Ryeshitelni* affair. (2) The *Ratstoropny* affair. (3) Russian warships which escaped into Chefoo after the fall of Port Arthur.

Sect. III. Russian warships at Kiaochow 447

Sect. IV. Russian warships at Manila 452

Sect. V. The *Diana* at Saigon 453

Sect. VI. The sojourn of the Russian auxiliary cruiser *Lena* in the harbour of San Francisco 455

Sect. VII. The *Terek* at Batavia 457

CHAPTER II.

The Treatment of Belligerents in Neutral Ports.

Sect. I. General observations 459

Sect. II. Chemulpo incidents 462

Sect. III. Breaches of parole by Russian officers 467

Sect. IV. The Russian torpedo-destroyer *Bluni* stranded at Wei-hai-wei 473

Sect. V. The Shanghai murder case 476

Sect. VI. The crew of the *Lena* at San Francisco 482

CHAPTER III.

The Sale of Vessels by Neutrals to Belligerents.

PAGE

Sect. I. Sale of warships by a neutral Government to a belligerent 485
Sect. II. Sale of war vessels from neutral firms to a belligerent 487
Sect. III. Sale of vessels other than war vessels from neutral firms to a belligerent State 488
Sect. IV. Sale of merchantmen by neutral subjects to belligerent subjects 488

CHAPTER IV.

Contraband of War.

Sect. I. The Japanese attitude 490
Sect. II. The Russian attitude 495
Sect. III. The bean-cake question 515
Sect. IV. About rice 520
Sect. V. About tea 520
Sect. VI. About kerosene oil 523
Sect. VII. About cotton 524

PART V.

NEW CASES ON PRIZE LAW ADDED BY THE DECISIONS OF THE JAPANESE PRIZE COURTS.

CHAPTER I.

General Statements.

Sect. I. Japanese Prize Court Regulations and organisation of the Japanese Prize Courts 527
Sect. II. Vessels captured by the Japanese Navy . . . 537
Sect. III. Japanese principles concerning prize cases . . . 539
I. Petition by a party not interested 539
Case I. The *Manchuria* 539
Case II. The *Mukden* 541
II. Petition by an advocate other than a counsellor-at-law of Japan 543
Case. The *Mukden* 543
III. Petition by telegraph 544
Case I. The *Manchuria* 544
Case II. The *Resnik* 549
Case III. The *Manchuria* 551

PAGE

IV. Petition to establish prior right against the vessel . 551
Case. The *Nigretia* 551
V. Petition for the release of the vessel; establishment of prior right or payment of claim 557
Case. The *Russia* 557
VI. Petition for temporary attachment of the prize . . 559
Case. The *Mukden* 559
VII. Petition in any language other than Japanese . . 562
Case I. The *M. S. Dollar* 562
Case II. The *Mukden* 563
VIII. Several other principles 563
Sect. IV. Procedure of cases in the Japanese Prize Courts . . 565
(1) Reception of case. (2) Examination of crews and passengers. (3) Inspection of goods. (4) Inspection of letters, landing of crews and passengers and the reception of visitors by the crews and passengers. (5) Release of crews and passengers. (6) Advertisement of vessels and cargoes. (7) Trial and decision. (8) Fees and stamps. (9) Execution of decisions. (10) Returning ship's papers.

CHAPTER II.

Enemy Vessels.

Sect. I. Russian vessels 574
Case Ia. The *Argun* 574
Case Ib. The cargo of the *Argun* 576
Case II. The *Bobrick* 580
Case III. The *Ekaterinoslav* 582
Case IV. The *Juriady* 591
Case V. The *Kotic* 593
Case VI. The *Lesnik* 595
Case VII. The *Manchuria* 596
Case VIII. The *Mukden* 598
Case IX. The *Nadajda* 604
Case X. The *Thalia* 605
Sect. II. Vessels that assisted hostile operations of the enemy 620
Case. The *Aryol* 620
Sect. III. Vessels employed by the hostile Government and those navigating with the enemy's licence 625
Case I. The *Australia* 625
Case II. The *Montara* 633

CHAPTER III.

Vessels Carrying Contraband Persons.

Case. The *Nigretia* 639

CHAPTER IV.

Vessels Carrying Contraband Goods.

PAGE

Case I. The *Aphrodite* (British) 651
Case II. The *Bawtry* (British) 659
Case III. The *M. S. Dollar* (British) 664
Case IV. The *Henry Bolkow* (British) 671
Case V. The *Lydia* (German) 674
Case VI. The *Scotsman* (British) 682
Case VII. The *Severus* (German) 692
Case VIII. The *Tacoma* (American) 694
Case IX. The *Vegga* (Swedish) 703

CHAPTER V.

Blockade Runners.

Case I. The *George* (French) 711
Case II. The *Fuping* (German) 712
Case III. The *Veteran* (German) 714
Case IV. The *King Arthur* (British) 721

CHAPTER VI.

Un-neutral Services.

Case I. The *Industrie* 732
Case II. The *Quang-nam* 735

CHAPTER VII.

Released Vessels.

Sect. I. Vessels released by the decisions 739
Case I. The *Eastry* (British) 739
Case II. The *Rincluden* (British) 741
Case III. The *Shishan* (British) 742
Case IV. The *Hsiping* (British) 745
Case V. The *Saxon Prince* (British) 747
Case VI. The *Peiping* (Chinese) 749
Case VII. The *Aggi* (Norwegian) 750
Case VIII. The *Helmes* (Norwegian) 752
Sect. II. Vessels released by the special ordinance 753
The *Hans Wagner* (German) 753
The *Kow-loon* (German) 754
The *M. Struve* (German) 754
The *Arufried* (Norwegian) 754
The *Barracouta* (American) 754
The *Centennial* (American) 754

APPENDICES.

		PAGE
I.	Speech of Baron Komura on the Manchurian Question	755
II.	The memorandum of the seven professors	759
III.	Diary of the war between Japan and Russia	761
IV.	The Treaty of Peace	774
V.	Japanese Regulations Governing Captures at Sea	778
VI.	Complete list of the vessels captured by the Japanese Navy	794

TABLES.

I.	Table showing the number of Japanese subjects in Russian territories and Manchuria at the outbreak of the war	44–45
II.	Table showing the number of Russian prisoners living in private houses	108
III.	Table showing the locality of prison barracks, and the separation of prisoners according to religious sect	114
IV.	Table showing the number and nature of articles left by Russian deceased	121
V.	Table showing the sums of money given to Russian prisoners	124
VI.	Table showing the offences of the Russian prisoners and punishments administered by Japan	131
VII.	Table showing the number of released prisoners	136
VIII.	Table showing the number of Russian prisoners given artificial limbs and eyes	136
IX.	Table showing the diseases among prisoners	137
X.	Table showing the number of released crews	139
XI.	Table showing the number of merchantmen visited, captured, or sunk by the Russian warships	275–283
XII.	Table showing cases of claims for damages caused by capture	355
XIII.	Table of the Japanese floating hospitals	375
XIV.	Table showing Russian warships in neutral ports	417–418
XV.	Table showing the numbers of vessels chartered by Japanese subjects	490
XVI.	Table showing captured vessels, arranged according to nationality	537
XVII.	Table showing condemned vessels, and reason for condemnation	538

PAGE

XVIII. Table of vessels adjudicated at various Prize Courts and the Higher Prize Court 538

XIX. Table showing the number of cases tried before the Prize Courts 538

XX. Table showing the number of cases tried before the Lower Prize Courts 538

XXI. Table showing the number of appeals taken to the Higher Prize Court 539

XXII. Table showing all the captured vessels, arranged according to the date of captures 794

PART I.

THE OUTBREAK OF WAR, AND ITS EFFECTS.

CHAPTER I.

THE OUTBREAK OF WAR.

Sect. I. General Statements.

Many continental writers insist upon the necessity of a declaration of war;[1] but the practice of states during the last three centuries has rarely agreed with this opinion, and there are many publicists, especially in England and the United States, who approve of this practice.[2]

By referring to the history of International Law, we will find several stages in the progress of opinion.[3]

The ancient world recognised the necessity of formal declarations of war, the Greeks and the Romans alike being wont to so declare in solemn form after demand and refusal of satisfaction by the opponent; the declaration was publicly conveyed by a herald, whose person was held inviolable, from the offended to the offending state. The determination of the formalities proper to such declarations was a main function of the Roman Fetial College, and the principles followed were enshrined in the Jus Fetiale.

The Roman war practice in this matter lingered after the fall of the Roman Empire; the Roman Church, whose faith subdued the barbarian conquerors, lent its sanction to the custom of making a formal challenge to the foe, which well harmonised with the proud temper of the warriors of the North.

[1] Grotius, III., C. 3, § 6; Vattel, III., § 51; Calvo, IV., § 1907; Bluntschli, § 521; Fiore, III., No. 1274; Heffter, § 120.

[2] Bynkershoek, Quaest. Jur. Publ., I., C. 2; Kluber, § 238; G. F. Martens, § 267; Gareis, § 80; Liszt, § 39; Ullmann, § 145; and many English writers.

[3] Walker, *A Manual of Public International Law*, pp. 104–105.

Accordingly, so long as the ideas of chivalry held sway among men, public declarations of war in some form were always issued to the enemy by the opponent sovereign. As late as 1657 a Swedish herald brought a declaration of war to the Court of Copenhagen.

During the seventeenth century, however, a wide divergence began more and more to show itself between the statements of legal authority and the facts of practice, Grotius and his fellows asserting under the Law of Nations, if not under the Law of Nature, the necessity of a formal notice being given to the enemy before making an attack, while belligerents habitually neglected to issue such notice, although commonly excusing the omission on some special grounds.

Gustavus Adolphus declared a formal notice to the enemy to be necessary in the case of a defensive war, and this convenient distinction commended itself alike to belligerents and writers in certain quarters. The practice of issuing such notices had in the early days of the eighteenth century become almost entirely obsolete.

In December, 1881, and January, 1882, the Board of Trade in England sat on the subject of Channel Tunnel, under the chairmanship of Sir T. Farrer.[1] In the course of the proceedings of that committee, Sir T. Farrer asked a series of questions, all connected with the point raised by him, in the following words:

"Looking upon what we ourselves remember, is it probable that war would be declared against us, as it were, out of a clear sky, without some previous strain or without notice that a quarrel was impending? Has this happened in any single case within the last 50 or 100 years?"

To ascertain the facts on this subject, Brevet-Lieutenant-Colonel J. F. Maurice prepared an historical abstract of cases in which hostilities have occurred between civilised Powers prior to declaration or warning. He says:

"The question has been raised whether a country living in peace with all its neighbours has any reason to fear that war may suddenly burst upon it.

[1] J. F. Maurice, *Hostilities without Declaration of War;* Preface, pp. 3–4.

"Many of the improvements of modern science, where they break down the natural barriers between nations, offer facilities to an invading army, which would be confessedly dangerous to national independence if the two countries whose barriers are removed or pierced were at war.

"If, however, war and peace are really separated by a distinct line, so that a nation at peace may take for granted that which would happen if it were at war, and that which constitutes war cannot possibly involve peace, then, before war can take the place of peace, a sufficient time must be given during which the necessary changes can be made to suit the attendant altered conditions of life; there will be no reason to fear lest the facilities offered to kindly neighbours should become the means of aggression for bitter foes.

"It appears, therefore, to be of some importance to ascertain historically whether within the last 200 years any cases have occurred in which the warning of coming war has not been very clear, or has not been given long beforehand. For it is not safe that the question should be left to be determined by casual impressions and chance surmises; it is necessary that whatever may have been the facts in the past the experience of modern times should be carefully recorded. The most excellent general impressions as to what ought to be the mode of procedure by which statesmen give warning before they make war, will not be an adequate security for the freedom of a kingdom. It is in fact true that under the excitement of popular passion or private ambition, rulers of armies or of armed nations have sometimes disregarded all obligations of the kind, and have, in the midst of profound peace, taken advantage of the confidence of their neighbours.

"If such a thing has, under the conditions of modern times, ever happened, it is always possible that it may happen again. Unless national life and security are to be seriously imperilled, provision must be made, not only against that which will certainly happen, but against any danger which the experience of the past shows to be among the chances to be reckoned with. When the unexpected blow has once fallen, it will be in vain to plead that many previous years have passed during which nothing of the kind has happened.

"It is to clear this doubt as to what the experience of the past in this matter has been, that the following paper has been prepared. A chronological table has been arranged, showing all the circumstances under which hostilities have been commenced by different countries against others, prior to a declaration of war, from the year 1700 to 1871.

"The result of the investigation, as the work has gone on, has

been to completely change its character. It was commenced under the impression that here and there a casual case might be discovered in which the ambition of a Napoleon or of a Frederick had led to some breach of established usage. The result is to show conclusively that there has not been, unless in mere theory, and in the tone adopted by historians as to what ought to have been, any established usage whatever on the subject. Circumstances have occurred in which 'declarations of war' have been issued prior to hostilities; but during the 171 years here taken (from 1700 to 1870 inclusive), less than ten instances of the kind have occurred.

"One or two doubtful instances of previous declaration have not been referred to.

"The other cases of previous declaration are mentioned and are chiefly interesting as showing how few of them were due to a punctilious desire to warn an unsuspecting friend that he was about to be treated as an enemy. In one case France issued a declaration of war prior to joining us in a war against Spain; this may be considered as a fair case of giving warning, but in all instances in which the Power warned is already at war, the warning is comparatively valueless. For the country being at war, preparations against surprises have already been made; the conditions of war have already taken the place of the conditions of peace. It is only those cases in which a country actually at peace with all its neighbours, has received warning of coming war, that provide peaceful citizens with adequate precedents on which to build their hopes of security.

"In the second case here recorded, political motives led the French convention to declare war against Europe; in the third case, popular excitement led to a similar declaration.

"After the Peace of Amiens, England and France declared war, there being no motive to tempt either to effect a surprise, since both Powers had been preparing for war during nearly all the time of peace, and England, as Napoleon well knew, regarded Napoleon's acts of aggression against Switzerland as virtually hostilities against herself.

"On the other hand, 107 cases are recorded in which hostilities have been commenced by the subjects of European Powers or of the United States of America against other Powers without declaration of war. This number only includes for the European Powers instances of European action in Europe, on the borders of the Mediterranean, or against colonies in possession of European Powers abroad. If the whole history of Indian, Chinese, and extra-colonial wars with savage tribes had been added, the number might have been greatly increased, but the only effect would have been to lengthen the paper without supplying illustrations precisely relevant to the matter in hand.

"It is also noteworthy that in the course of 171 years, England engaged in hostilities 30 times, France 37 times, Prussia 7 times, Austria 12 times, America 5 times and Russia about 7 times, saying nothing of hostilities against Asiatic nations, all these without any prior declaration of war."

Thus, by strength of international usage, a declaration of war need not necessarily precourse belligerent relations, and so if Japan opened the war without any declaration of war, nothing can be said against it. It would be entirely another question if the future was the subject under discussion. It is an indisputable fact that an occurrence in conformity with past precedent cannot be criticised by what was to be hoped of the future.

In the second Hague Conference the following Convention was passed:

Convention Relative to the Opening of Hostilities.

His Majesty the Emperor of Germany, King of Prussia, etc.:

Considering that, for the security of peaceful relations, it is important that hostilities shall not begin without a previous notice; and

That it is likewise important that a state of war shall be made known without delay to the neutral powers; and

Being desirous of concluding a convention for this purpose, have appointed as their plenipotentiaries, to wit:

[Names of plenipotentiaries.]

Who, after depositing their full powers, found in good and due form, have agreed on the following provisions:

ARTICLE I.

The contracting Powers agree that hostilities between them should not begin without a previous unequivocal notice, which shall either be in the form of a declaration of war with reasons therefor, or of an ultimatum with a conditional declaration of war.

ARTICLE II.

A state of war shall be made known without delay to the neutral Powers, and shall not be effective with regard to them until they receive a notice, which may even be given by telegraph. However, the neutral Powers cannot use the lack of a notice as a pretext if it should be proven beyond doubt that they really knew of the state of war.

ARTICLE III.

Article I. of the present convention shall be applicable in case of war between two or more of the contracting Powers.

Article II. shall be binding in the relations between a contracting belligerent and neutral Powers which are also contracting parties.

Prof. J. Westlake remarks:[1]

"This regulation coincides with the doctrine which we have laid down above. Only two remarks are needed in order to put the matter in a clear light. One is that the declaration of war is now expressly required to be *motivée* which the declarants have always made it for their own justification. The other is that the commencement of hostilities without a preceding declaration, in such peculiar cases as are contemplated above, is left possible by the fact that the parties are not made to contract that they will not commence hostilities against one another otherwise than as described, but recognise that hostilities ought not (*ne doivent pas*) to be otherwise commenced.

"Nothing can more clearly show the impossibility of insisting on an interval of notice between a declaration of war and a commencement of hostilities under it, than the fact that the very moderate proposal of a 24-hours' interval, made by the delegation of the Netherlands, was not accepted. The Conference has therefore rather confirmed than weakened the necessity that, in order not to be taken unprepared, every nation must rely on its own vigilance and on no formal rule."

As mentioned in the diary in Appendix III., just after the Japanese torpedo boats made an attack on the Russian fleet at Port Arthur, the following declarations were issued by both the governments:

JAPANESE DECLARATION OF WAR.

(*Official Translation.*)

10th Feb., 1904.

We, by the Grace of Heaven, Emperor of Japan, seated on the Throne occupied by the same Dynasty from time immemorial, do hereby make Proclamation to all Our loyal and brave subjects as follows:

We hereby declare war against Russia and We command Our Army and Navy to carry on hostilities against that Empire with all their strength, and We also command all Our competent authorities to make every effort, in pursuance of their duties and in accordance with their

[1] Westlake's *International Law*, Part II., *War*, 1807, p. 267.

powers, to attain the national aim with all the means within the limits of the law of nations.

We have always deemed it essential to international relations and made it Our constant aim to promote the pacific progress of Our Empire in civilisation, to strengthen Our friendly ties with other States, and to establish a state of things which would maintain enduring peace in the Extreme East and assure the future security of Our Dominion without injury to the rights and interests of other Powers. Our Competent Authorities have also performed their duties in obedience to Our will, so that Our relations with the Powers have been steadily growing in cordiality. It was thus entirely against Our expectation that We have unhappily come to open hostilities against Russia.

The integrity of Korea is a matter of constant concern to this Empire, not only because of Our traditional relations with that country, but because the separate existence of Korea is essential to the safety of Our Realm. Nevertheless Russia, in disregard of her solemn treaty pledges to China and her repeated assurances to other Powers, is still in occupation of Manchuria and has consolidated and strengthened her hold upon those provinces and is bent upon their final annexation. And since the absorption of Manchuria by Russia would render it impossible to maintain the integrity of Korea and would in addition compel the abandonment of all hope for peace in the Extreme East, We determined in those circumstances to settle the question by negotiation and to secure thereby permanent peace. With that object in view, Our Competent Authorities, by Our order, made proposals to Russia, and frequent conferences were held during the course of six months. Russia, however, never met such proposals in a spirit of conciliation, but by her wanton delays put off the settlement of the question, and by ostensibly advocating peace on the one hand while she was on the other extending her naval and military preparations, sought to accomplish her own selfish designs.

We cannot in the least admit that Russia had from the first any serious or genuine desire for peace. She has rejected the proposals of Our Government; the safety of Korea is in danger; the vital interests of Our Empire are menaced. The guarantees for the future which We have failed to secure by peaceful negotiations, We can now only seek by an appeal to arms.

It is Our earnest wish that by the loyalty and valour of Our faithful subjects, peace may soon be permanently restored and the glory of Our Empire preserved.

RUSSIAN DECLARATION OF WAR.

10th Feb., 1904.

By the grace of God We, Nicholas II., Emperor and Autocrat of all the Russias, etc., make known to all our loyal subjects:

In Our solicitude for the maintenance of peace, which is dear to Our heart, we made every exertion to consolidate tranquillity in the

Far East. In these peaceful aims we signified assent to the proposals of the Japanese Government to revise agreements regarding Korean affairs existing between the two Governments. However, the negotiations begun upon this subject were not brought to a conclusion, and Japan, without awaiting the receipt of the last responsive proposals of Our Government, declared the negotiations broken off and diplomatic relations with Russia dissolved.

Without advising us of the fact that the breach of such relations would in itself mean an opening of warlike operations, the Japanese Government gave orders to its torpedo boats to suddenly attack Our squadron standing in the outer harbour of the fortress of Port Arthur. Upon receiving reports from the Viceroy in the Far East about this, We immediately commanded him to answer the Japanese challenge with armed force.

Making known this Our decision, We, with unshaken faith in the Almighty and with a firm expectation of and reliance upon the unanimous willingness of all Our loyal subjects to stand with us in defence of the Fatherland, ask God's blessing upon our stalwart land and naval forces.

Given at St. Petersburg, January 27, 1904, A.D. (new calendar, February 9, 1904), and in the tenth year of our reign, written in full by the hand of His Imperial Majesty, Nicholas.

On the 18th Feb., 1904, the Russian Government published the following manifesto:

"Eight days have passed since Russia has been burning with indignation against an enemy which has suddenly broken off negotiations and whose aim it was to obtain a slight success in the long desired war by a treacherous attack. The Russian nation with natural impatience is wishing for a speedy revenge and expects news from the Far East with feverish anxiety. The unity and power of the Russian nation remove doubts that Japan will receive chastisement for her treachery and for having challenged Russia to war. While our Sovereign desired to maintain peace, the circumstances of the outbreak of hostilities compel us to wait with patience for news concerning the success of our troops, which cannot be received before decisive action is taken by the Russian army. The wide distances of the territory attacked and the desire of the Emperor to maintain peace, were the reasons for the impossibility of making far-reaching preparations for war beforehand. It will not take much time to give Japan signal defeats worthy of the power of Russia, while Russia will be careful not to shed unnecessarily the blood of her children in inflicting chatisement on a nation which well deserves it and which has challenged Russia in an arrogant manner. She must, however, wait for events with patience in the certainty that our army will revenge the attack a hundredfold. The operations on land still lie in the distant future. We cannot receive news from

the seat of war very quickly. Unnecessary shedding of blood is not worthy of the power and greatness of the Empire of Russia. Our Fatherland shows so much unity and willingness to make sacrifices in the national cause that all correct news arriving from the seat of war shall be immediately published to the whole nation."

Sect. II. Russian Protests and Japanese Answers.

Russia's strong protest to the Powers is as follows:

A FULL TEXT.

Russia presented to the Powers, through her Representatives, on February 22, a protest against certain actions of Japan in Korea, which she alleged to be against the recognised rules of International Law. The Russian document reads:

"Since the rupture of negotiations between Russia and Japan, the attitude of the Tokyo cabinet has constituted open violation of all customary laws governing the mutual declarations of civilised nations. Without specifying each particular violation of the laws on the part of Japan, the Imperial Government considers it necessary to draw the attention of the Powers to the acts of violence committed by the Japanese Government with respect to Korea. The independence and integrity of Korea as a fully independent empire have been fully recognised by all the Powers, and the inviolability of this fundamental principle was confirmed by Art. I. of the Shimonoseki treaty, and by the agreement for this purpose between Japan and Germany on January 30, 1902, as well as by the Franco-Russian declaration of March 16, 1902.

"The Emperor of Korea, foreseeing the danger of a possible conflict between Russia and Japan, addressed, early in January, 1904, a note to all the Powers declaring his intention to preserve the strictest neutrality. This declaration was received with satisfaction by the powers and it was ratified by Russia.

"According to the Russian Minister to Korea, the British Government charged the British diplomatic representative at Söul to present an official note to the Emperor of Korea thanking him for his declaration of neutrality.

"In disregard of all these facts, in spite of all treaties, in spite of its obligations, and in violation of the fundamental rules of international law, it has been proved by exact and fully confirmed facts that the Japanese Government,

"First, before the opening of hostilities against Russia, landed its troops in the independent empire of Korea, which had declared its neutrality.

"Second, with a division of its fleet made a sudden attack on February 8th—that is, three days prior to the declaration of war—on two Russian warships in the neutral port of Chemulpo. The commanders of

these ships had not been notified of the severance of diplomatic relations, as the Japanese maliciously stopped the delivery of Russian telegrams by the Danish cable and destroyed the telegraphic communication of the Korean Government. The details of this dastardly attack are contained and published in an official telegram from the Russian Minister at Söul.

"Third, in spite of the international laws above mentioned, and shortly before opening of hostilities, the Japanese captured as prizes of war certain Russian merchant ships in neutral ports of Korea.

"Fourth, Japan declared to the Emperor of Korea, through the Japanese Minister at Söul, that Korea would henceforth be under Japanese administration, and she warned the Emperor that in case of his non-compliance Japanese troop would occupy the palace.

"Fifth, through the French Minister at Söul she summoned the Russian representative at the Korean court to leave the country, with the staffs of the Russian Legation and Consulate.

"Recognising that all the above facts constitute a flagrant breach of international law, the Imperial Government considers it to be its duty to lodge a protest with all the Powers against this procedure of the Japanese Government, and it is firmly convinced that all the powers, valuing the principles which guarantee their relations, will agree with the Russian attitude. At the same time the Imperial Government considers it necessary to issue a timely warning that, owing to Japan's illegal assumption of power in Korea, the Government declares all orders and declarations which may be issued on the part of the Korean Government to be invalid.

"I beg you to communicate this document to the Governments to which you are accredited.

"LAMSDORFF."

First Reply of the Japanese Government to the Russian Circulars.

22nd Feb., 1904.

The Russian Government have, in their communiqués of the 18th and 20th instants, charged Japan with having treacherously obtained a slight victory by a sudden attack upon Russia, who was bent upon maintaining peace, and asserted that since the rupture of diplomatic relations can never be looked upon as the opening of hostilities, and since Japan did not issue her declaration of war until the 11th, she was guilty of a flagrant breach of the principles of International Law in making, as early as the 8th Feb., most unwarrantable attacks on Russian men-of-war and merchant ships.

That Russia had never entertained any sincere desire for peace may be clearly seen from the facts that she persistently refused throughout the whole course of the negotiations to meet the proposals made by Japan in a conciliatory spirit, and that by wanton delays put off the settlement of the question, while at the same time she was busily

extending her naval and military preparations. In confirmation of these facts may be given her warlike preparations in the Far East since April last, when she failed to carry out her promised second evacuation of Manchuria.

INCREASE IN NAVAL STRENGTH.

	No.	Tonnage.
Battleships	3	38,488
Armoured cruiser	1	7,726
Cruisers	5	26,417
Torpedo destroyers	7	2,450
Gunboat	1	1,334
Mine-ships	2	6,000
Total	19	82,415

In addition to these, Russia sent destroyers in section by rail to Port Arthur. The work of putting those vessels together was hurried up, and seven of them have been already completed. Furthermore, two vessels of the Volunteer fleet were armed at Vladivostock and hoisted the Russian naval ensign.

She further ordered out one battleship, three cruisers, seven destroyers, and four torpedo boats (total tonnage amounting to about 30,740), which might have joined the Russian squadron already in the Far East had not certain ulterior circumstances compelled Russia to recall them, and these, if added to the others, would make the aggregate increase 113,000 tons.

INCREASE IN LAND FORCES.

Since the 29th of June last, when, on the pretext of a trial transportation on the Siberian railway, Russia sent to Chita two infantry brigades, two artillery battalions, a body of cavalry, and a military train, Russia has continued to despatch troops to the Far East, and at the beginning of the present month their total augmented strength was over 40,000, and plans were being made for sending out, if necessary, over 200,000 more.

She has at the same time been engaged day and night in strengthening the fortifications at the naval ports of Port Arthur and Vladivostock, building forts at Hunchun, Liaoyang, and other strategical points, and forwarding arms and ammunition to the Far East by the Siberian railway and the Volunteer fleet; and in the middle of October last, a train of 14 cars hurriedly left Russia laden with the equipment of a field hospital.

It is therefore quite evident that Russia had not the least inclination for friendly settlement, but solely sought by military preponderance to force Japan into submission.

The military activity of Russia became, from the latter part of January to the beginning of February, still further intensified. On the

21st of January about two battalions of infantry and a detachment of cavalry were despatched from Port Arthur and Dalny to the northern frontier of Korea; and on the 28th of the same month, an order to prepare for war was given by Admiral Alexieff to the forces which were stationed in the vicinity of the Yalu; and on the 1st of February, the Commander at Vladivostock, under orders from his Government, requested the Japanese Commercial Agent at that port that, as a state of siege might at any moment be proclaimed there, he would make his nationals prepare to withdraw to Khabarovsk. At Port Arthur all the powerful warships, except a battleship then under repair, steamed into the open sea, while troops advanced in large forces from Liaoyang toward the Yalu.

Who can then say that Russia had no warlike intentions or that she was unprepared for war? Japan, seeing that the situation had become so critical that it admitted of no further delay, was compelled to break off the abortive negotiations and decided to take necessary steps for self-protection. The responsibility for the challenge to war rests, then, not with Japan, but solely with Russia.

Finally, on the 6th of February, Japan announced to Russia her decision to terminate pending negotiations, and that she would take such independent action as she might deem best to defend her position menaced by Russia and to protect her established rights and legitimate interests, and that she would sever her diplomatic relations and withdraw her Legation. The term independent action naturally includes the opening of hostilities. Even supposing that Russia was unable to understand it in that sense, that is, of course, no reason why Japan should, in Russia's place, be held responsible for the misinterpretation. Again, it is the unanimous opinion of international jurists that a declaration of war is not an indispensable prerequisite to the opening of hostilities. Indeed, it has been the common practice in recent wars to declare war subsequently to the opening of hostilities. Japan's action is not therefore open to the least criticism from the standpoint of international law. It must certainly be confessed that the charge sounds rather odd, coming as it does from the lips of Russia; for there are not only very many historical instances of that country herself instantly taking a hostile action without declaring war, but in 1808 she invaded Finland even before the rupture of their diplomatic relations.

Second Reply of the Japanese Government.

March 2nd, 1904.

The Imperial Japanese Government is given to understand that the Russian Government has recently addressed a note to the Powers in which the Government of Japan is charged with having committed certain acts in Korea which is considered by Russia to be in violation of International Law, and all future orders and declarations of the Korean Government are declared in that note to be invalid.

The Imperial Government does not find it necessary in the present instance to concern themselves in any way with the opinions or declarations of the Russian Government, but it believes it to be their right and duty to correct misstatements of fact which, if permitted to remain uncontradicted, might give rise in the minds of neutral Powers to incorrect inferences and conclusions.

Accordingly the Imperial Government makes the following statement respecting the five acts, which in the note referred to are declared to be fully proved and confirmed facts:

1. The Imperial Government admits that Japanese troops landed in Korea before the declaration of war was issued, but not before a state of war actually existed between Japan and Russia. The maintenance of the independence and territorial integrity of Korea is one of the objects of the war, and the despatch of troops to the menaced territory was a matter of right and necessity which had the distinct consent of the Korean Government. The Imperial Government draws a sharp distinction between the landing of Japanese troops in Korea in the actual circumstances of the case, and the sending of large bodies of Russian troops to Manchuria without the consent of China, while peaceful negotiations were still in progress.

2. The Imperial Government declares that the allegations under this number are untrue. The Imperial Government did not stop the delivery of Russian telegrams by the Danish cable, neither did they destroy the Korean Government's telegraphic communication. Regarding the alleged sudden attack, Feb. 8th, on two Russian men-of-war in the port of Chemulpo, it is only necessary to say that a state of war existed and that, Korea having given her consent to the landing of Japanese troops at Chemulpo, the harbour of Chemulpo had ceased to be a neutral port, at least as between the belligerents.

3. The Imperial Government has established Prize Courts with full authority to pronounce finally upon the question of the legality of seizures of merchant vessels. Accordingly it would manifestly be out of place for the Imperial Government to make any statement regarding the assertion under this number.

4. The Imperial Government also declares the charge under this number to be absolutely and wholly without foundation in fact.

5. The Imperial Government denies the accuracy of the statement under this number. No demand, either direct or indirect, was addressed by the Japanese Government to the Russian Minister to retire from Korea. On the 10th of February the French Chargé d'affaires called on the Japanese Minister and informed him, as he did afterward in writing, that it was the desire of the Russian Minister to leave Korea, and asked the opinion of the Japanese Minister on the subject. The Japanese Minister replied that if the Russian Minister would withdraw in a peaceful manner, taking with him his staff and Legation guard, he would be fully protected by Japanese troops. He did so withdraw of his own free will on the 12th of February, and an escort of Japanese soldiers was furnished him as far as Chemulpo.

In this connection it may be remarked that the Russian Consul at Fusan remained at his post as late as the 28th of February. It is reported that he was compelled to stay so long in absence of instructions which the Russian Minister apparently did not care to give his Consul before his departure. When it was made known that necessary instructions had at last reached the Russian Consul, and that he desired to leave Fusan as soon as possible, the Japanese Consul in the same port offered him every facility for his departure, and his passage to Shanghai through Japan was arranged by the latter.

Just after the war had commenced and before the governmental replies to the Russian protest had been issued, the following essay was published by the author. The reason for adding it here is that it may take the place of a minute observation of the outbreak of the hostilities, though in many respects it may appear to be a duplication of the government's replies.

Sect. III. A Personal Observation on the Russian Declaration.[1]

1. *Data Concerning the Outbreak of the War.*

The Russian Government seems to have endeavoured to throw upon Japan the responsibility of having trampled the peace of the Orient by upbraiding our conduct in the vilest of terms from the point of view of the so-called International Law. Leaving the vileness of the reproaches to take care of themselves, we have here, in a few words, to justify those points, so much exaggerated and ill-construed by the Russians. Should a formal notice necessarily precede the commencement of war or should it be condemned by the authority of International Law? None will deny that the answer must be in the negative, for belligerent relations may be commenced at any time, as the law expressly authorises. Before we clear up this point, let us summarise very briefly those facts that tend to put our fair dealing in its proper light.

To sum up the Russo-Japanese negotiations prior to the commencement of war: In the latter part of July, 1903, the Japanese Government declared to Russia our primary wishes,

[1] This essay appeared in the *Koku-min*, Tokyo.

and under date of August 12th formally sent to them a writ containing our requisites, to which the Russian Government gave reply as late as the 30th of October, accompanied by the refusal to permit any negotiations being held at the Russian capital. After repeated conferences, at Tokyo, of the deputies on both sides, our Government sent to Russia a settled revision of requisites dated the 30th of October, to which, after much delay, answers came to us, dated the 11th of December. To our admonitory notice, dated the 21st, urging Russia to reconsider, the answer arrived in Tokyo on the 6th of January, 1904; and as to our repeated notices requiring their reconsideration, they declined to give an answer, even when pressed by our officials several times; but they zealously continued preparations for war. At this crisis the Japanese Government found it inevitable to put a stop to her friendly relations with Russia, and sent a notice to this purport to the Russian Government. Now, since the international relationship was broken off under such circumstances, neither of these hostile nations should have had any objection to an hostile measure; which, however, in this case was resorted to, on Japan's part, after a long notice, thereby affording Russia sufficient time for preparation. The severing of international friendship was announced to Minister Rosen by Baron Komura in Tokyo at 2 o'clock p.m., on the 6th of February, and an official notice of the same purport was handed to Count Lamsdorff by our Minister Kurino, at St. Petersburg at 4 o'clock the same day.

Thus there was an interim of more than two days between the breaking off of international friendship, resorted to on the part of Japan after so many moderate measures, and our destroyers' attack at the harbour of Port Arthur on the 8th. Availing themselves of such an exceptional display of indulgence, if they had wished they might have given all the necessary cautions to Port Arthur and other quarters of consequence. These facts considered, our attitude on this occasion can be said to have been rather inclined toward generosity than to have been treacherous, as they allege.

Dr. Lawrence says:

"The fact that, when the attack was at last delivered, the officers were engaged in festivity, proves them negligent, but does not prove their foes treacherous."

Nothing could be more clever and keen than this criticism.

2. *Hostilities Need No Precursive Notice.*

To cite a few of the important instances in which there was no warning given:

In 1715, during a time of peace, the Duchies of Brehmen and Verden were seized by England. These provinces were Swedish.

In 1718, Spain, by a powerful expedition, secretly prepared, seized Messina and the greater part of Sicily.

On the 11th of August, 1718 (six months before any declaration of war), Byng destroyed the Spanish fleet.

In 1727, Spain, still at nominal peace with England, laid siege to Gibraltar from February 11th to June 23rd.

In August, 1756, Frederick the Great suddenly invaded Saxony with 75,000 men. He had previously asked for explanations as to certain movements of Austrian troops, and having received an evasive answer, despatched a second Minister to ask for a definite statement whether or not Austria would pledge herself not to invade Prussia that year or the next. As Carlyle puts it, his troops were meantime everywhere on the march "to the frontier in an industrious, cunningly devised, evident, and yet impenetrably mysterious manner." On the receipt of an answer from Maria Theresa that his idea that she and the Empress of Russia were contemplating attack on him was baseless he instantly crossed the Saxon frontier and published a declaration—"protesting in the most solemn manner that he had no hostile views against his Polish Majesty or his dominions; that his troops did not enter Saxony as an enemy; that he only seized it as a sacred 'depositum,' and a means of protecting his own territory, threatened, as he had reason to believe, by the union of the King of France, the King

Elector, the Czarina, and the Empress Queen; that he would take care that his troops should maintain the best order and the most exact discipline; and that he desired nothing so much as the happy minute when he could have the satisfaction of restoring his hereditary dominions to his Polish Majesty."

So sudden and unexpected was his stroke that the Polish Court, which was at the time at Dresden, had not had time to remove its secret archives, which Frederick seized and published to the world, showing that Maria Theresa's answer to him—as personal a pledge of her own word as a lady as it was possible for a sovereign to have given—was in express terms false; that the Empress and the Polish Court had, within six months after the Peace of Dresden, commenced a plot to dismember Prussia, in which the Empress of Russia had joined by the Treaty of St. Petersburg (22nd of May, 1746); that on the 14th and 15th of May, 1753, the Russian Senate had secretly agreed to dismember and crush Prussia; and that France, having been gained over, Russia and Austria were actually moving troops to put the project into execution, when Frederick anticipated them by more rapid movements. In this case his declaration was not designed to give any warning of his coming hostile acts, but (at the moment when his movements could no longer be concealed) to reduce the resistance of the Saxons to a minimum.

In 1796, the French Republican army, without declaring war, seized forts and territory of the States of the Church, Naples, Tuscany, Parma, Modena, etc.

In 1798, Republican France suddenly invaded Republican Switzerland.

In 1798, France suddenly attacked Piedmont. Novarra, Suez, and Coni were seized without declaration.

In 1807, negotiations were still on at Constantinople while an expedition was being prepared under the orders of the English Government at Messina for the seizure of Egypt. Before any news of the final rupture at Constantinople had reached either Egypt or the English Government, "on the 6th of

March the *Tigre*, 74, Captain Benjamin Hallowell, accompanied by the *Apollo*, 38, Captain Fellows, and the *Wizard*, 16, Captain Polmer, with 33 sail of transports, having 5000 troops on board, under Major-General Fraser, set sail from Messina, and on the 15th the *Tigre*, keeping the rest of the expedition out of sight, reached the offing of Alexandria, and summoned the governor. This summons having been disregarded, Captain Hallowell waited till the 20th, when the whole of the armament anchored in Aboukir Bay; the troops, to the number of 1000 men, were, amidst many difficulties, got on shore, with five field pieces, and a detachment of blue-jackets, under Lieutenant Boxer, who moved forward the following day, and took possession of the castle. The governor, as soon as he perceived the accession of strength, accepted terms of capitulation, and on the 21st, "the anniversary of the Battle of Alexandria," the city was taken possession of."

In 1816, Portugal seized Spanish Montevideo during peace.

In 1832, France seized Ancona during absolute peace with Rome.

In 1848, with the Danish Minister still at Berlin, Prussian troops crossed the Danish frontier without declaration.

The war of 1863, between Austria and Prussia on the one part, and Denmark on the other, virtually commenced by the occupation of Holstein and Lauenburg by the troops of the two great Powers.

We thus see that, as the present International Law stands, hostilities do begin with actual battle, and that again no precursory notice is needed to make it lawful.

If the Russian protestation against Japan's attack without any prior warning is serious, a glance at their own similar doings, indelibly put down in history, would show Russia herself to be by far the more advanced delinquent in this direction, assuming the unlawfulness of the conduct.

Before the battle of Narva, in 1700, Russia took military action without giving any special notice. (Cf. J. F. Maurice, "Hostilities without Declaration of War," p. 12.)

In 1733, the Russian army suddenly entered Poland for the purpose of electing Stanislaus, anticipating the movement with no declaration of war. (Ibid., p. 16.)

In 1753, Russia, allied with Austria and Prussia, invaded Poland without warning. (Ibid., p. 22.)

In 1801, the Russian Emperor Paul, without notice, seized 200 British ships in Russian ports, thus opening her military movement. (Ibid., p. 34.)

In 1806, in the course of a negotiation, the Russian army suddenly attacked Moldavia, taking possession of a fort. (Ibid., p. 38.)

In 1827, the allied fleets of Russia, England, and France destroyed the Turkish fleet at Navarius, without any prior warning. (Ibid., p. 49.)

In 1828, in the Russo-Turkish war, hostilities on both sides preceded a declaration of war. (Ibid., p. 49.)

In 1831, the Russians fired upon, sunk, and captured Greek ships. (Ibid., p. 50.)

In 1836, Russia, together with Prussia and Austria, seized Cracow without any warning. (Ibid., p. 55.)

In 1853, the Crimean war was commenced without any declaration of war. (Ibid., p. 64.)

In this way hostilities without a declaration of war have been a common recourse, frequently availed of by Russia since 1700, and she sometimes went so far as to take military action in the midst of diplomatic negotiations. A protest from such a quarter is illogical and unexpected, to say the least.

3. *On the Russian Manifesto Concerning Korea.*

According to an official telegram received by the Department of Foreign Affairs, the Russian Government seems to have sent to the Powers a manifesto, dated the 22nd of February, 1904, reproaching the Japanese for the attitude assumed in Korea. Finding as yet no access to the original, reliance must be placed on a translation in the following brief criticism:

A. "Prior to the opening of hostilities the Japanese troops landed in Korea, the Government of which had proclaimed neutrality."

Suppose the above be an exact rendering. Then the Russian Government in this point committed a serious mistake, both logically and legally. When we consider that rights and obligations as a neutral Power, as far as International Law is concerned, are first conceivable after hostilities have commenced, "to land in neutral Korea prior to the commencement of hostilities" must be logically and legally unintelligible, for how is it possible that in time of peace Korea should declare neutrality? Or, to construe it with much greater sympathy, it may mean, "It is against the provisions of the Russo-Japanese Treaty to have put our army into Korea"; then it makes sense, but what a legal inconsistency to blame Japan for what they had already perpetrated themselves.

B. "On the 8th inst., three days prior to the declaration of war, a Japanese squadron which was staying at Chemulpo, a neutral port of Korea, unexpectedly attacked two of our warships which were placed in such a position that they were unable to know of the rupture of negotiations, owing to the fact that the Japanese had intentionally stopped the delivery of our telegrams sent through the Danish cable, and had destroyed the telegraph lines owned by the Korean Government."

As repeatedly explained, Japan's attitude stands justified by the provisions of International Law that, when once an international relationship is broken off there is a freedom to resort to war *de facto*. As for the difficulties Russia met with in her telegraphic communications, it is of no concern.

History contains several cases in which war *de facto* took place while diplomatic negotiations were going on, for instance:

On the 23rd of November, 1806, the Russians suddenly invaded Moldavia, and there took possession of a fort during a diplomatic conference. In 1807, under similar circumstances, the English army descended upon Egypt.

On the 4th of April, 1848, the Prussian army invaded

Holstein, while at Berlin the Danish minister was negotiating with Prussia.

In 1850, the English army attacked Greece, without breaking off their international relationship.

Compared with these precedents, our first military movement off Seöul should be deemed anything but precipitate and entirely free from blame.

Here we cannot help being reminded of the Chinese declaration of war, in the Chino-Japanese war, in which we find this brilliant clause: "Judge of our surprise then when, half way to Korea, a number of the Wojen ships suddenly appeared, and taking advantage of our unpreparedness opened fire . . ."; and further of the fact that Russia then was one of those civilised Powers who made great fun of the same queer words!

C. "The Japanese Government, in defiance of the rules of International Law, captured several of our merchantmen within the neutral ports of Korea at the moment when hostilities were about to be opened."

As for the explanation on this point, recourse is had to some of the ablest spokesmen of our naval authorities and the Councillors of Prize Courts.

D. "The Japanese Government, through the Japanese Minister at Seöul, declared to the Korean Emperor that Korea should hereafter be placed under Japanese administration, and gave a warning that should the Emperor disregard this declaration, Japanese troops would occupy the Palace."

This point has been touched several times since June, 1903, consistently insisting on Japan's lawful seizure of Korea when the Japanese-Russian War took place, and referring to the capture of the Danish fleet. (Cf. Westlake, Chap. 5; Hall, Section 85; the author's Essays on the Outbreak of the Russo-Japanese War; The Manchurian Problem.) When the law sanctions the seizure of Korea as a whole, who can possibly say anything against the occupation of a part of that whole?

E. "The Japanese Government, through the French Minister at Seöul, sent a note to the Russian Minister there, order-

ing the latter, together with the members of the Russian Legation, to withdraw from Korea."

Before we consider the legitimacy of this protest, its reliability should be settled. According to the official paper of the 15th of February, the Russian Minister's retreat from Korea seems to have been of his own accord. If any compulsory measures had been recognised as taken by Japan, it was quite in his power to have absolutely disregarded them. Once more, if to the Russian Minister an alternative was left to remain or not, the retreat must have been of his own free will, not forced by any outside compulsion. Why did he retreat from his post, where he should have remained, in order to protest against Japan?

In this way the Russian manifesto, supposed to be based upon International Law, absolutely lacks legal support, and there is no doubt but that all the civilised Powers give to it no more than a mere glance of ridicule.

Sect. IV. When Did the Russo-Japanese War Commence?

As to the question of the time the war broke out there are different views. To understand the question, it is best to briefly describe the facts relative thereto, and for that purpose a diary of the beginning of the war is quoted here.

The 6th of Feb., 1904. The Japanese Minister, Mr. Kurino, at St. Petersburg handed the ultimatum to Count Lamsdorff.

The Japanese fleet started from Sasebo port.

The *Sai-yen* captured the *Ekaterinoslav*, the vessel of the Russian volunteer fleet.

The *Hei-yen* captured the *Mukden*, the vessel of the East China Railway Company, Russia.

The 8th, at 11 p.m. The Japanese torpedo boats attacked Port Arthur and gave serious injury to the Russian warships.

At noon the *Koreetz* and *Variag* were ordered to leave Chemulpo. Fight ensued in which both the Russian warships were sunk.

The opinions concerning the above-mentioned question are as follows:

(1) War is not necessarily opened by the war *de facto*. The Russo-Japanese war, therefore, was opened by the sending of the ultimatum by the Japanese authority to the Russian Government.

In the decision of the Higher Prize Court on the *Argun* case we find the following words:

"War is not always commenced by the war *de facto*. It can be opened by a declaration of war or ultimatum, through which a party expresses the determination of fighting."

(2) The war began when the Japanese fleet left Japan with the object of attacking the Russian fleet. In the decision of the Sasebo Prize Court on the *Argun* case we find the following sentence:

"The war commenced when the Japanese fleet left Sasebo with an intention of attacking the Russian fleet."

(3) The war must be opened by the declaration of war. This is actually the view of the Russian Government. But it is quite without meaning to say that the late war began with the declaration made by belligerent Powers, which was in reality issued after the war *de facto* at Port Arthur.

(4) War may be opened by the war *de facto*. But what constituted war *de facto* in the late war? There were several views among those who were of a common opinion that war may be opened by the war *de facto*:

A. Some said that the attacking of the Russian fleet in Port Arthur was the first action of the war *de facto*, and by this action the war commenced.

B. Some said that the capture of the Russian merchantmen was the very fact of the war *de facto*. In this view the capture of the *Ekaterinoslav* is deemed as such; that is, the taking of the ship as a Russian private vessel.

The author thinks this view is not correctly substantiated from two points of view:

1st. The *Ekaterinoslav* cannot be deemed a private vessel,

because she is a vessel of the Russian Volunteer Fleet Company.

Mr. Hall says:

"The incorporation of a part of the merchant marine of a country in its regular navy is of course to be distinguished from such a measure as that above discussed. A marked instance of incorporation is supplied by the Russian volunteer fleet. The vessels are built at private cost, and in time of peace they carry the mercantile flag of their country; but their captain and at least one other officer hold commissions from their sovereign, they are under naval discipline, and they appear to be employed solely in public services, such as the conveyance of convicts to the Russian possessions on the Pacific. Taking the circumstances as a whole, it is difficult to regard the use of a mercantile flag as serious; they are not merely vessels which in the event of war can be instantaneously converted into public vessels of the state, they are properly to be considered as already belonging to the Imperial Navy."

So she is not a private vessel.

2nd. Modern International Law agrees in the opinion that war exists between states, but not between individuals of the belligerent states, and that a belligerent state, however, may treat an individual of the other belligerent as one who has an enemy character contaminated by the National enemy character. So, the enemy character of an individual of one belligerent state is the effect of a national enemy character. The enemy character of States comes first, then the individual character follows. Now, on the 6th of February, 1904, there was no war. At that time the Japanese fleet detained the Russian vessel belonging to an individual, who must not be deemed as an enemy, because there was no war. How can this detention of a private vessel in time of peace cause a war between states? Effect is not the cause, as logic shows.

C. Some said that the capture of the Russian public vessel in the first act was the beginning of war *de facto*. The capture of the *Ekaterinoslav*, deeming her to be a public vessel

of Russia, is mentioned as such an act. This view was insisted upon by the author from the very beginning of the late war. Afterwards this view was also actually expressed on the occasion of the Higher Prize Court on the *Mukden* case. It runs thus:

"On the way to the zone of battle the Japanese fleet captured the *Ekaterinoslav* of the Russian volunteer fleet, which was a vessel liable to naval service in time of war. This was nothing more than the carrying out of the hostile intentions, and any capture made after that time is lawful."

On the whole, the author's view is that the Russo-Japanese war was commenced by the capture of the *Ekaterinoslav*, as she was liable to be appropriated for Naval service during the war.

CHAPTER II.

THE PROTECTION OF PERSONS AND PROPERTY OF ONE BELLIGERENT WITHIN THE TERRITORY OF THE OTHER ON THE OUTBREAK OF WAR.

Sect. I. The Days of Grace for the Enemy's Subjects and Their Properties.

As to the treatment by one of the belligerent nations of the enemy's subjects staying in its territory at the outbreak of war, Powers have not been of the same opinion. In 1803, when France entered into hostile relations with England, Napoleon I. issued an imperial decree well known in history as the *Arrêté de Napoleon*,[1] detaining until 1814 all the Englishmen between 18 and 60 years of age, while, on the other hand, during the Franco-Prussian war, quite an opposite proceeding occurred when the French Government expelled all the Prussians then staying in Paris and in the department of the Seine.[2]

The theory, however, remains unequivocal amidst such an incongruity of facts that those who wish to be engaged in peaceful occupations may be suffered to remain in the hostile nation and those having a mind to leave suffered to do so, along with their effects, within a certain number of days of grace.

Below is a brief historical outline on the subject.

In England, as early as the fourteenth century, it was provided by the Statute of Staples (27 Ed. III. St. 2) that on the outbreak of war foreign merchants should have forty days within which to depart the realm together with their goods,

[1] Browning, *England and Napoleon in 1803*, pp. 272–295.

[2] Washburn, *Recollections*, I., p. 83; Rolin Jacquemyns, *La Guerre Actuelle*, pp. 33–36.

with an extension of time in case of necessity. A similar practice seems to have been adopted in other countries. In later times the privilege of safe withdrawal within a certain period, ranging from six months to a year, became very commonly a matter of express treaty provision. Finally, it became a generally recognised principle that subjects of either belligerent, whether merchant or not, found within the territory of the other should be at liberty to depart freely within a period reasonably sufficient for the arrangement of their affairs, subject to a possible exception in the case of persons whose detention might be a matter of great political or military importance. Modern practices appear to be even more liberal, inasmuch as the custom has been inaugurated of allowing the enemy's subjects to continue their residence during their good behaviour. By act of the United States Congress, 1798, the President is authorised in case of war to direct in what cases and upon what security the subjects of any hostile nation shall be permitted to remain in the United States. By the same act, withdrawing subjects are to be allowed such reasonable time as may be consistent with public safety for the recovery, disposal, and removal of their goods and for their departure.

This is also occasionally a matter of express stipulation by treaty. Thus, by the Treaty of 1795, between Great Britain and the United States, it was provided that in the event of war the subjects of either country should have the privilege of remaining and continuing their trade, so long as they conducted themselves peaceably and committed no offence against the laws.[1]

Where such permission is expressly or implicitly given, it would seem to follow that such persons are entitled to the same privileges as other resident aliens. But in Great Britain it has been held in *Alcinous v. Nigren*, that an alien enemy, even though allowed to remain in British territory, cannot, without express license from the Crown, maintain an action in the English Courts during the continuance of the war.

[1] Hall, *A Treatise on International Law*, p. 392.

Apart from a treaty, moreover, the right to expel an enemy still remains, and may rightly be exercised under circumstances of political or military necessity. On the outbreak of the Franco-Prussian war of 1870, permission was at first given by the French Government to subjects of the enemy to remain in France, or in any French Colony, so long as their conduct furnished no reason for complaint; but any new admission into French territory was made a subject for special permission, which was only to be exceptionally granted; thirty days were allowed to the enemy's ships by which they were to quit France with the privilege of safe conduct; vessels bound to French ports, with goods on French accounts, laden before the declaration of war, were to be at liberty to enter and discharge their cargoes, with the privilege of safe conduct on their return voyage. On the 17th of September, 1870, however, a decree was issued ordering the enemy's subjects to quit French territory within three days, unless specially authorised to remain, as already referred to.[1]

With regard to the enemy's property, we have clearly seen from a leading case that the Supreme Court of the United States has agreed that the outbreak of war gives the Sovereign a right to confiscate such property, although it goes on to hold that the mere declaration or existence of war does not of itself render such property subject to confiscation. This may be said to fairly represent the existing law on the subject.

When the citizens of a hostile state are allowed to remain, the question of confiscation of property is not likely to arise. The express or implied permission to stay would involve, as an almost necessary consequence, the according of the same general protection to their property as that afforded to other domiciled aliens. If ordered to quit the belligerent country, then by modern usage and sometimes also by express treaty provision, alien enemies would be entitled to a reasonable time for withdrawal, and within such time they would doubtless be privileged to collect and take with them such part of their

[1] See page 24.

effects as they could, or failing that, to dispose of them to other persons.[1]

I. *The Japanese Attitude Towards the Enemy's Subjects in Her Own Territory at the Outbreak of War.*

(1) *The Chino-Japanese War.*

To take an example from the Chino-Japanese war, the Imperial decree attached below was issued on August the 4th, 1894. (The quotation is here as rendered into French by Mr. Ariga, a learned friend of the author, who prepared the original draft of the same.)[2]

Décret impérial du 4 août 1894 relatif à la protection des Chînois résident au Japon.

Peu après la promulgation de la déclaration de guerre, le 4 août 1894, le gouvernement japonais rendit un décret relatif à la protection des Chinois établis au Japon. En même temps, il invita les préfets de l'Empire à exercer une surveillance sur leurs administrés pour qu'aucun acte de violence ne soit commis sur les Chinois. L'Empire du Japon, se conformant aux usages des peuples civilisés, considérait ainsi la guerre comme un fait entre Etats; il entendait que les relations entre individus ne fussent point entravées, tant qu'ells ne porteraient pas atteinte aux intérêts militaires. Voici le texte du décret impérial:

ART. I.—Les sujets chinois pourront, à condition de se conformer aux prescriptions du présent décret, continuer à demeurer dans toutes les localités de l'Empire où il leur a été permis de résider jusqu'à présent, en jouissant de la protection de leur personne et de leurs biens, et ils pourront s'y livrer à toute profession pacifique et licite. Toutefois, ils devront se soumettre à la juridiction des cours et des tribunaux de l'Empire.

ART. II.—Les sujets chinois qui doivent résider dans l'Empire en vertu de l'article précédent feront, dans le délai de vingt jours, à partir de la promulgation du présent décret, une déclaration au préfet du lieu de leur résidence, pour demander l'énregistrement de leur résidence, de leur profession, ainsi que de leurs noms et prénoms.

ART. III.—Le préfet remettra un certificat d'enregistrement aux Chinois qui auront obtenu l'enregistrement prévu à l'article II.

ART. IV.—Les sujets chinois ayant obtenu l'enregistrement indiqué à l'article II. pourront transférer ailleurs leur résidence. Mais ils devront obtenir du préfet de leur résidence un endossement sur le certificat d'enregistrement, et, dans les trois jours après leur arrivée au lieu de

[1] Pitt-Cobett, pp. 155–157. [2] Ariga, *La Guerre Sino-Japonaise*, pp. 23–25.

leur résidence nouvelle, ils devront faire une déclaration au préfet de ce lieu, afin d'obtenir de nouveau l'enregistrement indiqué à l'article II.

ART. V.—Les préfets pourront faire sortir des territoires de l'Empire les sujets chinois qui n'auront pas demandé l'enregistrement établi par le présent décret.

ART. VI.—Les sujets chinois qui portent atteinte aux intérêts de l'Empire, commettent des infractions, troublent l'ordre et la paix ou sont suspects de ces divers faits, outre les condamnations qu'ils encourront en vertu des lois et règlements, pourront encore être expulsés des territoires de l'Empire par un ordre du préfet.

ART. VII.—Le présent décret est applicable aux Chinois employés par les autorités ou par les particuliers de l'Empire.

ART. VIII.—Le présent avis ne préjudicie pas à tout ordre émis ou à toute mesure prise par une autorité militaire de l'Empire, à l'égard des Chinois y résidant, dans un but qu'elle se propose d'atteindre dans la guerre.

ART. IX.—Aucun sujet chinois ne sera admis, après la promulgation du présent décret, à entrer dans les territoires de l'Empire qu'en vertu d'une autorisation spéciale du ministre de l'intérieur demandée par l'entremise du préfet.

ART. X.—Le présent décret entrera en vigueur dès le jour même de sa promulgation.

Le 4 août de la 27 année de Meiji (1894).

(Nom et cachets impériaux.)

(Contre-signés) COMTE ITO,
Président du Conseil;
COMTE INOUYÉ,
Ministre de l'Intérieur;
MUTSU,
Ministre des Affaires étrangères;
YOSHIKAWA,
Ministre de la Justice.[1]

(2) *The Russo-Japanese War.*

At the outbreak of the Russo-Japanese War the Department of Foreign Affairs asked its Legal Committee for an opinion as to whether a similar ordinance as that given during the Chino-Japanese war was to be issued or not; to which question a negative answer was given after a deliberate consultation. Hence short instructions addressed to the local and municipal Governors were substituted for a formal Imperial Ordinance.

[1] For English version, see the author's *Case on International Law during the Chino-Japanese War*, pp. 169–170.

Instruction No. 1, issued by the Department of Home Affairs to the governmental officers, prefectural and municipal, and governors of Hokkaido and Formosa:

Feb. 9th, Meiji 37.

Now that the Russian legation and consulate are about to be withdrawn, special care should be taken for the protection of Russian subjects staying within our territory.

COUNT TARO KATSURA,
Minister of Home Affairs.

Further, other instructions were given to inform the governors, prefectural and municipal, as to the scope of protection to be exercised over the Russian subjects.

Feb. 10th, year of Meiji 37.

It being a matter of universal acknowledgment that the war declared by our Imperial Government against Russia has nothing to do with the Russian populace, toward whom we have never cherished anything like enmity, the Russian subjects now staying in our country shall meet with no interference to their remaining in Japan; newcomers shall be welcomed, and even their living here shall be entirely free from all restrictions. Their bodies, lives, honour, and effects, therefore, shall be carefully respected according to our registration, so that they may be able, without any fear, to engage in their lawful occupations with every claim upon all the protection our courts afford. In spite of our good will toward them, however, they will be held to a strict account for their behaviour, and if they are found in any way interfering with the military or naval arrangements, or doing anything that is contrary to the best interests of Japan, or if they are assisting in any way the military movements of their country, or if they disturb our peace, order, or good customs, or do anything contrary to our welfare, they shall be put under the proper restriction imposed by our laws, and may be immediately expelled from Japan. Besides, those who lack the means of maintaining themselves without relying on public assistance are likely to be subject to a similar measure. In a word, every possible advantage shall be extended to them, in so far as it does not conflict with our own national interests.

You are thus cautioned against exposing them to any inconvenience, when possible, and to any misunderstanding on the part of our populace at large.

COUNT TARO KATSURA,
Minister of Home Affairs.

Following are some of the main reasons we deviated on this occasion from the precedent established during the Chino-Japanese war.

I. Foreigners' rights and interests in matters concerning life and property being implicitly respected in the Japanese laws (cf. Civil Code, Section II) they need no special Imperial Ordinance to reassure them, and any such step would merely be duplicating what had been already conferred. An Imperial Ordinance was thus deterred, and a similar step resorted to during the Chino-Japanese war (the Imperial Ordinance, No. I) found entirely tautological.

II. A register, corresponding to the Imperial decree, Arts. II.–V., issued in the time of the Chino-Japanese war, was also found unnecessary, the names and nationalities of foreigners having been already fully registered in time of peace.

III. The text in the Imperial decree of 1894, on enforcing the withdrawal of foreigners if found necessary with a view to administrative or military requirements, was considered unnecessary. The reason is as follows:

There is no law in Japan containing any article corresponding to those regulations for the expulsion and admission of foreigners. But, by an administrative measure Japan can enforce the withdrawal of any foreigner whenever circumstances require it, and thus in such a case can expel even those of any other nationality as well as of Russia by administrative measures. Hence the addition of the clause, "the Russians can be expelled whenever military or administrative measures require it," may be made, when logically construed, to mean the exemption of all foreigners besides Russians from expulsion, even when such expulsion is urged by military or administrative necessity. By thus enacting a new law implicitly limited to Russians, Japan would be powerless to expel other foreigners, even when desirable.

This may serve, although indirectly, as an illustration of Japanese alertness in arriving at the required end without minute provisions by duplicate and elaborate ordinance. Again we may ascribe it to the growing perfection of the Japanese legislation, and congratulate ourselves in the thought that the enemy's subjects enjoyed the Japanese generous protective method.

II. *The Russian Attitude.*

The Russian treatment as regards Japanese subjects staying in Siberia was not, to say the least, generous or even fair, since no previous notice of expulsion had been given. On this point Dr. Lawrence thus declared his opinion:

"The first article of the Russian 'Rules,' issued on February 28, soon after the commencement of the present war, laid down that 'Japanese subjects are authorised to continue, under the protection of Russian law, to reside and to follow peaceful callings in the Russian Empire, except in the territories forming part of the Imperial Lieutenancy in the Far East. The treatment thus meted out to the subjects of Russia's enemy was a compound of the new liberality and the old severity. They were free to remain in all parts of the Empire save the provinces ruled over by Admiral Alexeieff. From these they were to be expelled at once. No time to wind up their affairs, no days of grace were given them. They were obliged to leave their homes and avocations immediately, and make for their country as best they could, in the midst of the turmoil and bitterness caused by Japan's sudden attack. What this meant in the way of robbery and cruelty we have already described. Though things righted themselves after a time, the prompt expulsion, and the hardships inflicted on the first refugees, do not redound to the credit of the Czar's Government, or its troops and subordinate officials. No such scenes were enacted in Japan. The enemy's officials, when they left the country, were surrounded in every circumstance with courtesy and honour; while, with regard to those Russians who remained, the policy of protection on condition of registration, which was enunciated by an Imperial Ordinance during the war with China, was again followed on the present occasion."

On the other hand, the Japanese in Asiatic Russia and Manchuria under the Russian command underwent unutterable difficulties while withdrawing. It is not without regret that justice forces the publication of the following unhappy, though actual facts, as instances of the disaster Japanese subjects met with, for the sake of humanity and the amelioration of International Law:

A STORY OF RUSSIAN INHUMANITY.[1]

"The *Jiji* publishes the statement made by one of the refugees who have just arrived in this country by the German steamer *Willehad*. We translate it in substance as follows:

[1] The *Japan Times*, 4th Dec., 1904.

"When diplomatic relations between Japan and Russia threatened to be broken off, a notification from Mr. Kawakami, our Commercial Agent at Vladivostock, was transmitted to all Japanese residents in Siberia and North Manchuria, inviting them to proceed to Vladivostock and to embark on a steamer, which, owing to the situation, would be the last one to leave for Japan. Prepared as we were for such a contingency, this notification came to us as a surprise. Though many of our compatriots at once availed themselves of this opportunity to return home, there were many who, owing either to their limited means or the distance separating the places of their residence from Vladivostock, were prevented from withdrawing. Only seven of our residents of Blagovestchensk succeeded in reaching Vladivostock in time to embark on the steamer, while a number of their fellow refugees, who left Blagovestchensk a few hours later, missed the opportunity, the vessel having left Vladivostock by the time they reached Nicholaevsk. As for our residents at Khabarovsk, some 100 succeeded in catching the above steamer, but the rest, 63 in number, were left behind. The fortnight or so which succeeded the outbreak of the war was passed in indescribable anxiety, when a notification was issued concerning the treatment of the Japanese in the Viceregal districts. As the result of this notification, 236 Japanese who remained at Blagovestchensk were detained in five unfurnished buildings which were guarded by sentinels, no communication being allowed between the refugees. Others of our countrymen who were in other places received similar treatment. On March 20 an order for our withdrawal was issued, and on the 22nd we started for an unknown destination. To cite an instance of Russian inhumanity, 63 of our compatriots from Khabarovsk were escorted to Nicholaevsk by ten troops with fixed bayonets, who treated them as if they were convicts, and during the 24 hours' journey between the two towns the refugees were only provided with tea. They found at Nicholaevsk 25 of their fellow-refugees, with whom they were detained for three days, the strictest vigilance being kept over them. It is true that each of the refugees received a daily allowance of nine sen, but it was not more than the allowance for convicts. How this mere pittance was inadequate to support us may be understood by the fact that two pieces of bread cost us seven sen. Next we were ordered to proceed to Kharbin, the Russian authorities having taken the trouble to hire carts with which to transport our effects from our detention rooms to the railway station. We were deeply impressed with this kind conduct of the Russians, but we were soon to be disillusioned. On arrival at the station we were ordered to pay for the carts, and as our remonstrances proved of no avail with the relentless Russians, we were obliged to pay.

"After journeying three days we reached Kharbin. Being forbidden to leave the train, we lived in the carriages, which, by the way, were not ordinary passenger carriages, but those used for the transportation of convicts. At Kharbin there were 11 Japanese who had been brought from various quarters. Of these, 10 were women, some of whom had

been detained for more than a month. A woman from the Korean frontier had been outraged by the Russian guards in the presence of her husband. Several other women had also been subjected to similar treatment. Five of these women were, on arrival at the prison at Kharbin, forced to deposit their money, which individually amounted from 200 to 500 yen, with the jailers. On departure the women received only 10 to 15 yen, and were told that the remainder would be returned on arrival at their destination. The promise, however, was not fulfilled. We were transported from Kharbin to Chita, and were imprisoned there for one day and night, during which time we were given a piece of brown bread and a quantity of soup. The following day we arrived at the eastern bank of Lake Baikal and started at 3 p.m. on a journey of 45 versts across the lake by horse sleighs, each of which seated five persons. During the night the cold was so intense that a four-months-old child was frozen to death. At midnight the western bank was reached, and we were at once conveyed into railway carriages. All the men and women suffered terribly from the cold and hunger, and it was with the deepest gratitude that we received a gift of bread and tea from a Colonel of Gendarmerie there. We were then taken to Tomsk by a branch line of the Siberian Railway. This caused much anxiety among us. We at first believed that we were being taken to St. Petersburg by the trunk line of the Siberian Railway, and now we were at the terminus of a branch line, and imprisoned there. We asked our guards for information, but could not obtain any. Our party, which consisted of 140 persons, was then taken to a place called Karpashova, on the Obi, and 200 versts from Tomsk. There we were detained for a month and a half, and during this time were well treated by the local authorities. We were afterwards joined by 230 refugees from Blagovestchensk, and the whole party was then taken to Perm, near the Ural mountains.

"A party of 330 persons was then distributed among Perm, Solikamsk, and Kungur, where we were permitted to work. Some were employed in gathering the wheat crops, others as coolies for the transportation of timber, and some were engaged in carrying salt. Owing to the fact that the above places are agricultural districts, we experienced great hardship in procuring sufficient food and clothing. It was insufferable to be regarded by the Russians as prisoners, and if we had all remained together we should have been starved to death. Governed by our desire to return home, we had appointed a committee for this purpose, whose quarters were then at Perm. Through the medium of certain Russian Jews, whose favour we had managed to acquire, we were able to communicate with the United States Ambassador at St. Peterburg and our Minister at Berlin, pleading for our immediate release. After the lapse of a month and a half—that is to say, at the beginning of September—a telegram was received from the United States Ambassador announcing that arrangements had been made for our return to Japan, and that a messenger would be despatched to Perm to escort us home. Needless to say, the telegram was received with mixed feelings of surprise and

joy, and *banzais* were shouted by all the party. Towards the end of September the messenger arrived at Perm, which place the party left on Sept. 25. During the journey homeward the party was joined by a body of women, who had been detained in a temple at Tomsk. On entering Germany the party was received by our residents there, as well as by Germans, who rendered every possible assistance. The impression made on our mind on the occasion will never be forgotten."

On the 29th of Feb., 1904, the following correspondence came from Tientsin:

Concerning the Withdrawing Japanese Who Arrived at Newchwang After the Withdrawal of the Japanese Consul at Newchwang.

On the 11th instant, on the withdrawal of the Japanese Consul from Newchwang, a special application was made to the American Consul for the protection of the Japanese subjects, acquainting him at the same time with the praiseworthy proposal made by Kaichi Okada and Kaichiro Tanaka, two Japanese proprietors of hotels at Newchwang, to accommodate all the Japanese who might come thither. Later on, however, on the 19th instant, these two Japanese also were compelled to leave Newchwang for Tientsin. From them, as well as from the report from the American Consul, complete information as regards the actual conditions at Newchwang, after the withdrawal of the Japanese Consul, was obtained. On Feb. 12, after the withdrawal of the Japanese Consul, the city was somewhat upset, since, about 8 o'clock in the morning, soldiers were seen hurrying about, and there was even a rumour abroad that the Japanese Squadron was preparing for an attack, which caused not a little sensation among Russian women, headed by the wife of the chief civil magistrate.

During the night some Russian warships kept vigil by means of a searchlight.

On the 12th more than 140 Japanese women, who came thither as refugees from Kharbin and other districts, were detained at the Yingkow station. Three of these, however, by name Hisa Yamada, Kawasumi, and Haru Takagi, successfully contrived to escape, and resorted to the Japanese Consulate, which they found already vacant. While roaming in that vicinity they were noticed by the American Consul, who delivered them to Okada. Except one who was left behind, Okada sent them, together with a Chinese employee, to meet midway the women coming from Niu-chia-tun. They were seized upon by the Russian authorities, and shared the same confinement as many other women, after having undergone various sorts of hard treatment, which was apparently provoked by their appeal to the American authorities. As soon as informed of this, Okada appealed to the American Consul, who in turn sought explanation from Mr. Grosse, the Russian chief civil magistrate, and received the telephone answer that they, the women

detained, were coming. Upon this Okada again despatched the before-mentioned Chinese employee to the station. He, however, found there only 13 women and three children, the others having been already sent back to Ta-shi-chao. These 16 Japanese thus were restored once more to Okada, to start on the following day for Shan-hai-kuan. According to a letter from the American Consul, Alexeieff, the Governor-General in the Far East, was said to have issued instructions that all Japanese found in Manchuria should be sent to Port Arthur, under the Russian protection, and this seems to have frustrated the efforts of the American Consul, who demanded of Mr. Grosse the serious consideration of the attitude Russian soldiers assumed towards our subjects withdrawing from the field, and arranged for the immediate delivery of the Japanese sent to Da-si-cho up to that time, in number about 100.

On the 12th two women succeeded in their escape from Ta-shih-chiao, and, disguising themselves in the Chinese costume, went back without molestation to Okada at Newchwang, when the American Consul was paying a visit, and from these refugees facts were learned contrary to what the Russian chief civil magistrate had pretended, and of what persecutions their fellow-countrymen were suffering.

On the 15th, being informed that two Japanese women were lurking in Yunraiyenkui, the American Consul asked Okada to accompany him thither to take them back. The two women, by name Chika Motomura and Sada Urazono, were found there as reported and were persuaded by the American Consul to speedily withdraw themselves; but failed at last to keep their promise.

The same night, while Danburg, a Norwegian, whose tenant Okada was, while paying a visit to Okada, two Russian officers, followed by about 30 soldiers, each armed with drawn sword or bayonet, rushed in, breaking through the front door, plundered the property and furniture, bound Okada, Kaichiro Tanaka, and Tokujiro Shigematsu, giving to the last-mentioned a stab on the head, and also pulled out one Chitose Takeshita, who was lurking in the adjoining room. Okada was prevented by the Russian intruders from letting Danburg go to inform the American Consul of the matter. Then, addressing in English Mrs. Hunt, who was looking out from a neighbouring window, he asked her to send an immediate despatch to the American Consul. Thus he presently got the American Consul to come to him, along with another American. The interview between the Consul and the Russian officers lost much of its purport because they did not understand each other's language. The Russians seem to have insisted on the absence of the Japanese Consul, and the American Consul reprimanded their unlawful conduct, explaining that he was invested with the same right as the Japanese Consul. Finally the police authorities were brought in, and set the bound men at liberty. Subsequently the American Consul spoke with the Russian chief civil magistrate regarding the lawless intrusion. The latter, after examining the officers concerned, expressed his deep regret over the affair, and suggesting as its motive a rumour that a number of Japanese residents were preparing for an attack. This apology, however, must

be of little weight when the fact is considered that at that time, according to the report of the American Consul, nearly 3000 Russian troops were stationed in and about Newchwang, while our subjects there were entirely unprovided with arms and explosives. The purpose, therefore, which the marauding Russians had before them must have been expressly the plunder of property. Next day Okada wrote out an invoice or statement of damages suffered. In the afternoon of the same day the American Consul declared that the Japanese would no longer be safe in the city; so that, about 4 o'clock, all the Japanese, escorted by the American Consul and a Russian soldier, withdrew themselves as far as the Ho-pe Station.

The facts thus far enumerated were obtained from a statement of Kaichi Okada and the report of the American Consul. The following further information concerning the Japanese sent to Che-foo via Port Arthur is from the Imperial Consul at Che-foo.

By the way, Mr. Miller, the American Consul at Newchwang, has always remained a great friend of ours, and his efforts in protecting the right of our subjects were incalculable, particularly since the withdrawal of the Japanese Consulate. We cannot but regard his activities with unmitigated satisfaction.

Although parallel cases in which the rights of life and property were trampled upon are by no means far to seek, we shall forbear the multiplying of instances; for nothing is more alien to the purpose of the present work than to record a mass of complaints.

Sect. II. The Protection of Catholics and Catholic Missionary Institutions in the Far East by the Japanese Government.

During the Russo-Japanese War the Japanese Government made great effort in protecting the subjects and citizens of neutral Powers in Manchuria, Korea, and other places which were under the Japanese military authorities. It is of interest to foreigners to have the facts of this protection described in detail, and here is given one case concerning the Catholics and Catholic Missionary Institutions in the Far East.

On the 13th of Feb., 1904, the *Politische Correspondenz*, published in Germany, contained an article, in which it stated that "it was well known that the Pope had applied, through the Nuncio in Paris, to the Japanese Government, for the pro-

tection of Roman Catholic Missionaries. The Catholic Missionaries in Japan, Korea, and Manchuria are nearly all of French nationality, and while there are about 90,000 Catholics in Japan, those living in Korea and Manchuria number 84,000."

It is true that the Nuncio in Paris made the above request to Mr. Motono, the Japanese Minister there, on the 8th of Feb., and that Mr. Motono transmitted the request to the Japanese Government. The Japanese Government replied without hesitation that proper protection would be extended to the lives and properties of the Catholics and Catholic Missionary Institutions as far as lay within the power of the government.[1]

On the 12th of Feb., 1904, Minister Motono handed the following note to the Nuncio:

AIDE MEMOIRE.

Le Government Japonais, déférent au désir exprimé par S. Exc. Monseigneur le Nonce Apostolique au nom du Saint Siège au Ministre du Japon à Paris, ne manquere pas de prendre toutes les mesures necessaires pour protéger la vie et les biens des Catholiques ainsi que les institutions Catholiques en tant qu'il se trouverait dans les limites de l'autorité du Gouvernement Impérial du Japon.

On the 17th the following answer was sent by the Nuncio:

Paris, le 17 Fevrier, 1904.

Nonciature du Saint Siège Apostolique en France.

MONSIEUR LE MINISTRE:

M'étant empressé de transmettre au Gouvernement du Saint Siège *l'Aide-Mémoire* que Votre Excellence a bien voulu m'adresser le 11 courant, concernant le protection des Catholiques dans toute l'étendu de l'Autorité du Gouvernement Impérial du Japon, j'ai l'honneur, à présent, de vous faire savoir que Sa Sainteté le Pape, Pie X., mon Auguste Souverain, en a éprouvé une véritable satisfaction. C'est pourquoi il me charge de vous prier Monsieur le Ministre, de faire parvenir ses plus vifs remerciements à Sa Majesté l'Empereur du Japon et à son gouvernement.

Le Souverain Pontife aimerait, en même temps, à faire exprimer à Sa Majesté Impériale toute sa gratitude pour la belle résponse

[1] Ariga's *La guerre Russo-Japonaise au point de vue continental et le droit international*, 1907, pp. 469–473.

qu'elle a bien voulu donner à la lettre de faire part de son avènement au Trône Pontifical.

De mon côté, je tiens, Monsieur le Ministre et cher collègue, à vous offrir l'expression de ma reconnaissance très sincère pour le bienveillant accueil, que vous avez fait et que vous avez obtenu de la part de votre gouvernement à ma prière du 8 courant; et je suis heureux de renouveler à Votre Excellence les assurances de tout ma haute et déferant consideration.

(Signé) B. LORENZELL,
Nonce Apostolique.

A Son Excellence Monsieur Motono,
Env. Extr. et Ministre Plenip. du Japon, Paris.

The Japanese Government put forth its best efforts in carrying out the wishes of the Nuncio.

The following are the names of the Catholic missionaries who remained in Manchuria under the Japanese protection:

List of the Catholic Missionaries in the Province of Mukden.[1]

Urbain M. Remise, resident à Tchi-a-keon sous prefecture Sion Yen.

Vincent Sage	Yangkouan	Kaiping
etc.	etc.	etc.

Chinese Missionaries.

Barthelemy Hia	Kaoukiatsai	Liao-yang
Laurent Hia	Chen Yang	Fung-cheng
etc.	etc.	etc.

These missionaries and the adherents of the Catholic Church, 9000 in number, were protected by the Japanese authorities.

Something must be added about the missionaries who left Manchuria and other places, which were under the military occupations of both belligerents. The following is the correspondence received from Newchwang, China, under the date of Sept. 19, 1904:

"There were in Manchuria many English, French, Danish, and other missionaries who took refuge in Newchwang and Tientsin at the outbreak of the war and who were wishing to return to their posts."

[1] There was a long list, but it is omitted here.

Their desires being known to the Japanese Government, we made inquiries as to what Russia was doing in the matter. The Russian authorities in the field protected those missionaries who remained at their original posts, but those missionaries who had quitted their posts were not allowed to return.

The Japanese Government, however, having the intention of doing all in their power for the missionaries, after some consultation between the Foreign and Military Departments, decided that the Christian missionaries should be allowed to return to the places where they were before the war, provided those places were under the Japanese military authorities, who would fully realise their responsibility, and who were perfectly able to protect them.

On the 6th of Oct., 1904, the military authorities issued the following notice:

The Christian missionaries who left the interior of Manchuria may return to their original places if said places are within the precincts of Liao-yang and Haitcheng; but permission is not given to live outside the fortifications on account of possible danger.

These are the facts concerning the protection of the Catholics and Catholic Missionary Institutions, but it must not be understood that Japan favoured only the Catholics. In fact, Japan endeavoured to protect all nationalities within their power, even the Russians, whatever their religion.

It seems rather strange to foreigners that there is so little animosity in Japan between religious sects, the people not being overzealous in these matters. The Japanese Government treats the different sects alike, provided they do nothing inconsistent with the safety of the State. So, during the war, the Russian Bishop Nicholai remained in Japan, and safely carried on his religious work.

In conclusion, it is a rather regrettable fact that the Nuncio made of Japan the above request, because had he understood the condition of Japanese civilisation he would not have

found it necessary. The making of such a request by these eminent men clearly shows that there are still many people who are not well acquainted with the religious, social, and legal conditions of Japan.

In 1871 the Edict against Christianity was removed, free preaching was allowed, and religious liberty firmly guaranteed by the Japanese Constitution, promulgated 1889.[1]

Thus all people in Japan, either native or foreign, have full liberty of religious belief in times of both peace and war.

On the whole, speaking from the social point of view and from that of International Law, Japan acted on the principles of true ethics and law. Japan as a nation is very law-abiding, and is also very sincere, and it is very desirous that the real condition should be fully known and appreciated by the people of the Great West—both in America and Europe.

Sect. III. The American Protection of Japanese Interests in Russian Territories at the Outbreak of the War.

Russia and Japan are now, after the great struggle, very friendly with each other, and France who, during the late war so sympathetically conveyed her feelings of friendship to Russia, has now concluded an *entent* with Japan. All disagreeable things are now passed, and the great Powers of the world are all at present on good terms, forgetting what they felt during the war. At this time it is fitting to bring to light what the United States did for Japanese subjects in protecting them during the said war. This may be done without irritating any country of the world. On the contrary, it may prove how benevolent the United States is, and how righteous she is from the point of view of International Law, in protecting the Japanese non-combatants who were in Russian territories and in the districts occupied by the latter.

On the 7th of Feb., 1904, Baron Komura, the Japanese minister of Foreign Affairs, sent a telegram to Mr. Takahira, the Japanese minister at Washington, instructing him to see the

[1] Sidney L. Gubick's *Evolution of the Japanese*, p. 327.

Secretary of State as soon as possible and to ask him if the United States Government would permit their embassy at St. Petersburg and their consulates in various places in Russia to assume charge and protection of Japanese subjects and interests in Russia; he instructed him to add that the Japanese Government retains a lively appreciation of the friendly offices extended to them by the United States during the Chino-Japanese war, and that they venture to hope that nothing will prevent the United States from acting for them in a similar capacity in the present instance.[1]

Mr. Takahira carried out the instructions, to which Mr. John Hay, the Secretary of State, replied that the United States Government was willing to do everything in its power to take charge of the Japanese interests in Russia as requested, and was sending instructions to the United States Ambassador to Russia to ascertain if that arrangement was agreeable to the Russian Government.

Below is the answer of the United States Government.[1]

Mr. John Hay to Mr. Takahira.

Feb. 9, 1904.

DEAR MR. TAKAHIRA:

I learn from our Ambassador at St. Petersburg that the Minister of Foreign Affairs has informed him that the Emperor of Russia sees no objection to our representatives looking after Japanese interests upon the withdrawal from Russia of all diplomatic and consular representatives of Japan.

Very sincerely yours,

(Signed) JOHN HAY.

Now to establish by facts the friendly attitude the United States of America assumed for the Japanese interests in various parts of the Russian territory.

I. *The Withdrawal of the Japanese from the Vladivostock Districts.*

According to an imperative instruction of the Russian Government, not a single Japanese was allowed to remain in Siberia and Manchuria, so that those Japanese found there at that time

[1] *Foreign Relations*, 1904, p. 430.

were forced to promptly fly for their lives, without having time to dispose of their properties, not only immovable, but also movable. It must be remembered that in the course of this rather hazardous withdrawal, they owed much to the never-failing kindness of the American authorities.

Most of the Japanese found in Siberia and Manchuria took their departure through Vladivostock, while some came back through Newchwang, some through the European continent, and some were detained in Port Arthur.

The number and whereabouts of the Japanese found in 1904 within the command of the Commercial Agent in Vladivostock are as follows, according to the report dated January 17th, 1904, by Mr. Kawakami, the Commercial Agent:

Places.	Round Numbers.
Vladivostock	3,000
Nicholae Usurieski	600
Khabarovsk	250
Nicholaevsk	300
Blagovestchensk	230
Chita	40
Irkutsk	30
Stryetensk	30
Others	500
Along the Line of the East	.....
China Railway in North	.....
Manchuria	1,500
Total	6,480

Two thousand three hundred and twelve of the above came back on board the *Afridge*, an English ship which had sailed at 1 p.m., February 6th, 1904, and landed at the Port of Tsuruga, Japan. Again on the twelfth of the same month, Mr. Kawakami, the commercial agent, sent back 1511 Japanese, which was the maximum number to which he could afford any relief on board the *Batavia*, a German ship, to land at the Port of Moji. Those on board the above English ship were mostly from Vladivostock and its vicinity, and those on board the German vessel, from Siberia and Manchuria.

Owing, however, to the shortness of notice given, many were still left, of whom the following were ascertained:

Places.	Still Remaining.	
In Siberia.		
Vladivostock	50	21 of them being prisoners.
Nicholae Usurieski	4	Wives or concubines to Chinese.
Novikievski	43	
Fung-chung	4	
Blagovestchensk	285	Withdrawal forbidden because the absence of communicative system.
Nicholaevsk	258	
Stryetensk	17	
Nerchinski	17	
Chita	2	
Irkutsk	85	
Kiachta	1	
Tomsk	5	
In Manchuria.		
Boglanichinaya	10	
Mukum	1	
Hantaheiza	4	
Hananpo	10	
Kharbin	uncertain	Nearly 150 of them being said to be on their way towards Newchwang.
Jaranlen	15	
Chikhal	30	
Buchata	20	
Hailan	52	
Taimayuf	3	
Other Districts	100	
Total	986	

The solicitude of the Japanese Government, felt for those still remaining in the enemy's land, who must surely have been greater in number than the known list showed, was, however, largely relieved by the careful protection the American authorities afforded them.

The document below throws light on this point:

Mr. John Hay to Mr. Takahira.

Washington, March 8th, 1904.

SIR:

The United States Ambassador at St. Petersburg has sent to the Department copies of telegrams received by him from Mr. Greener,

the United States Commercial Agent in Vladivostock, dated February 24th.

In a telegram of February 15th Mr. Greener says that no private or cipher telegrams are being transmitted; that the Japanese commercial agent left Vladivostock on the 13th ultimo; that the British representative was leaving on the 15th; and the Japanese agent asked the American agent to occupy the Japanese agency.

In another telegram of the 15th Mr. Greener says that 2500 Japanese left Vladivostock on the 6th and that 1500 would leave with the Japanese agent.

Under date of the 19th Mr. Greener says that 117 Japanese arrived at Vladivostock on that day, and that he had undertaken to send them away on the following day. Their destination is not stated.

Under date of the 24th Mr. Greener says that the *Folmina* left on the 23rd with 194 Japanese collected since the 18th from Manchuria; that 20 women wished to stay, but that the commandant, at Mr. Greener's request, sent all away, as agreeable to our request.

(Signed) J. HAY.

On March 9th, 1904, Mr. Takahira, the Japanese Minister at Washington, sent a response, expressing on behalf of his government, cordial thanks for the steps taken by the United States.

In fact, throughout the war the American representatives spared no effort in protecting the interests of Japanese subjects.

II. *The Withdrawal of the Japanese from Port Arthur.*

Just as the diplomatic negotiations between Russia and Japan were found to be utterly hopeless, Mr. Kokichi Midzuno, the Japanese Consul at Chefoo, whose ability was well known, chartered an English ship of 2000 tons, and set out on the 7th of February to make a circuit through Port Arthur and Dalny in forty-eight hours. In this way 730 persons were put outside the dangers of the war.

This step of Mr. Kokichi Midzuno must have been really wonderful, when it is considered that it was just before the Japanese squadron of torpedo boats made its daring attack there. The *Rasbar*, the English ship which had arranged to take Japanese refugees to Japan, arrived at Chefoo with no passen-

gers on board. The captain told that on the 8th of February, when the ship was waiting for Japanese passengers, Russian authorities took all of them away who were on board the ship, and that no others were allowed to embark. She was detained there without reason until February 11th at 2 p.m.

The Japanese Government upon this, under date of February 13th, asked the United States Government to request the Russian Government, through her ambassador at St. Petersburg, to allow Japanese subjects to leave for Japan by the earliest steamer of a neutral country.

The British steamer *Wen-chow* arrived on February 15th from Port Arthur with 342 Japanese subjects of every description, among whom were 100 from Kharbin and vicinity. It is related that more than 100 women were separated from men at Tashichao, and were said to have been sent to Newchwang.

The following facts we should not omit, as the instances of the protection of Japanese subjects by the United States:

On February 13th, Consul Segawa received telegraphic information from Captain Kawasaki at Chin-chow that he had heard from a group of Japanese fugitives, women and children only, who were withdrawing from Newchwang for Shan-hai-kan, and who had with difficulty escaped from the Russians at Tashichao; that about 250 Japanese on their way from Chita, Kharbin, Kundalin, and Perm to Newchwang were stopped for some time at Mukden, and again at Tashichao, where they received most cruel treatment, and were conveyed to Port Arthur. Consul Segawa sent a telegram to the United States Consul at Newchwang in confirmation.

On February 14th United States Consul at Newchwang had asked the Russian authorities there to hand the Japanese over to him, but the Russian authorities answered that the protection of Japanese remaining in Manchuria rested with Russia, and all Japanese in Manchuria had been ordered to go to Port Arthur.

On the 14th of Feb., 1904, another report was sent in, saying that:

About 300 refugees from the environs of Kharbin, nearly half of whom were women, arrived at Mukden February 10th, where they were ordered to alight and received strict inspection and cruel treatment. On February 11th they were conveyed to Tashichao, where they met the same fate as at Mukden. On the same day the men only were sent to Port Arthur, and the women were allowed to proceed to Newchwang. They were once conveyed to Niu-chia-tun, and, excepting 13 who were missed by chance, again sent to Tashichao, whence they were sent to Port Arthur. The 13 women left at Niu-chia-tun were brought to Newchwang under protection of the United States Consul, February 12th, and they were sent to Shan-hai-kan, borrowing travelling expenses from the said Consul. In course of the above hardship, some of the 300 refugees were beaten and wounded, and were robbed of almost all of their money and personal effects by the Russian soldiers. Some of them escaped the same fate by bribing, and they were in a most destitute condition.

Without delay, the Japanese Minister of Foreign Affairs sent instructions to the Minister at Washington to communicate to the Secretary of State the text of the above reports, and to say to him that as the Imperial Government entertained grave apprehension as to the welfare of Japanese subjects remaining in Manchuria, they deem it necessary to request at once that the United States Government will issue necessary instructions to the United States Ambassador to Russia with a view to securing for those Japanese subjects such protection and treatment as are ordinarily accorded to the subjects of a belligerent state, who continue to be orderly and peaceful.

On Feb. 16 the Secretary of State agreed to instruct the United States Ambassador to Russia at once.

Soon afterwards we received the following report from Chefoo:

About 170 Japanese, mostly women, just arrived safely from Dalny on board a German steamer. Although some of them were maltreated on the way to Port Arthur yet the Russian authorities in that city and in Dalny seem to have duly protected them.

Besides these, two criminals and 100 other Japanese arrived at Chefoo from Port Arthur, and 322 arrived at Nagasaki from Dalny.

Thus nearly all of the Japanese subjects in Manchuria returned to Japan under the protection of the United States.

III. *The Withdrawal of the Japanese from Odessa.*

Soon after the commencement of hostilities, the Japanese Consul at Odessa received instructions from the Home Government to close the consulate, and to immediately leave the post, his staff accompanying him.

According to this order, Mr. Iijima left the post, leaving a servant named Togasi as the keeper of the unoccupied consulate.

On the 21st of August, 1904, the following information was received from Washington:

The United States Ambassador to Russia reports that the servant left in charge of our consulate at Odessa has been arrested and is to be expelled from the Russian Empire. Our Minister at Washington asked the United States Government to kindly instruct their consul in Odessa to take charge at once, and further to engage, if necessary, a special watchman at the expense of the Japanese Government.

Soon afterwards we received the following report from Vienna:

Togasi, the guard of our consulate at Odessa, was arrested on the 13th of August by the Russian police and detained until the 18th. After undergoing an examination, he was forcibly escorted by two gendarmes, on the latter day, as far as the Austrian frontier, whence he proceeded to Vienna. The United States Consul in Odessa rendered him every assistance and has taken charge of the consulate quarters.

On this occasion the American Government favoured us with her best offices, as the document below indicates:

American Consulate,
Odessa, Russia, August 27th, 1904.

HONOURABLE ALVEY A. ADEE,
Acting Secretary of State,
Washington, D. C.

SIR:

I have the honour to acknowledge the receipt of the following telegram:

Washington, D. C., August 22nd.

American Consul, Odessa:

Take custody of Japanese Consulate. Engage watchman if necessary.

ADEE.

This message was received on the 23rd instant, and I engaged a watchman the same day at thirty rubles per month.

I have also taken custody of the consulate. I may add that the Ambassador had previously instructed me to take charge of the Japanese Consulate, and I have done so to the extent of causing the place to be sealed up by the Russian authorities, pending more definite instructions.

The arrival of your telegram authorising me to engage a watchman enabled me to assume charge of the place.

I notified the Governor of Odessa on August 13th that the person in charge of the Japanese Consulate had, on that date, been arrested by the gendarmes, and consequently the consulate was without protection. I asked that special police protection be given the place. My request was promptly granted, the doors of the Consulate were sealed and the police placed on guard.

These have now been withdrawn. The servant or person who was left in charge by the late Japanese Consul, and who was expelled from Russia, was Kiichi Togasi. I have sent the Ambassador a full report of the case.

I am, Sir,
Your obedient Servant,
(Signed) THOS. E. HEENEN,
Consul.

P.S.—I have received a letter from the Japanese Minister at Vienna, in which he thanks me for the services rendered Togasi, and requests me to take charge of the consulate.

IV. *The Protection of the Japanese Subjects Returning Through Europe.*

The Japanese found in European Russia and the interior of Siberia, having no access to the Pacific Ocean, came back through Germany, setting out from Bremen. Their obligations while withdrawing to the zealous efforts of the American Ambassador in Russia and the sympathy of German officers and people ought not to be ignored.[1]

No particular mention is needed about the six Japanese who came back via Berlin on February 29th and March 22nd, 1904.

On March 26th 12 Japanese were enabled to withdraw from Russia safely, owing to the efforts of American Ambassador in Russia.

The following indicates the America-Japanese understand-

[1] *Foreign Relations*, 1904, pp. 431–432.

ing agreed upon prior to the withdrawal, concerning the protection of Japanese returning via Europe:

Mr. Takahira to Mr. Hay.[1]

Washington, March 19th, 1904.

SIR:

With reference to my conversation with you on Thursday last, the 17th instant, I beg here to hand to you a copy of the telegram which was received by Baron Komura, his Imperial Majesty's Minister of Foreign Affairs, from Mr. Inouye, the Japanese Minister at Berlin, in regard to a number of Japanese residents in Siberia now suffering from the untoward treatment of the Russian police authorities, and consequently requesting for protection and assistance to enable them to return to Japan.

I am now instructed to request that the United States Government will have the goodness to instruct His Excellency Ambassador McCormick to take necessary steps to the end that those Japanese subjects now in Russia, who are destitute and desire to return to Japan, may be sent to Berlin, as the Japanese Legation in that city will be prepared to take charge of them. As to the expenses required for the journey of those Japanese subjects from Tsuta to Berlin, I am in the hope that the United States Ambassador at St. Petersburg may find means to obtain the necessary information, as I shall be ready to furnish the amount necessary upon receipt of such information.

Accept, Mr. Secretary, the renewed assurances of my highest consideration.

(Signed) K. TAKAHIRA.

The answer is as follows:

Mr. Hay to Mr. Takahira.

Washington, March 19th, 1904.

SIR:

I have the honour to acknowledge the receipt of your note of the 19th instant, requesting that the United States Ambassador to Russia be instructed to take the necessary steps to the end that certain Japanese subjects now in Russia, who are destitute and desire to return to Japan, may be sent to Berlin, to be cared for by the Japanese Legation in that city.

In reply I have the honour to inform you that the Department has just received a telegram from Ambassador McCormick saying that twelve Japanese, six men and six women, in a destitute condition, arrived at St. Petersburg to-day from Irkutsk, not being allowed to proceed east, and who wish to proceed to Germany.

Mr. McCormick adds that he is arranging to send them to Berlin, where they are to find employment through the Japanese Legation or to be sent home.

[1] *Foreign Relations*, 1904, p. 431.

The Department has approved Mr. McCormick's action.
Accept, sir, the renewed assurance of my highest consideration.

(Signed) FRANCIS B. LOOMIS,
Acting Secretary.

In order to show how far the American Ambassador took pains in the protection of the twelve Japanese, together with one female then staying at St. Petersburg, the complete file of documents concerned is here published, notwithstanding its voluminous character and duplication, believing that same intricacy of correspondence to be a powerful witness to the extraordinary difficulties the American Ambassador underwent.

Mr. McCormick to Mr. Inouye.

American Embassy,
St. Petersburg, March 26th, 1904.

MY DEAR SIR:

As has already been communicated to you through the United States Ambassador in Berlin, and in accordance with instructions which I received from Washington, I took charge of the twelve Japanese refugees who arrived here from Siberia on March 19th and made arrangements for them to continue their journey to Berlin.

Not being able to secure promptly the presence of a resident Japanese who speaks Russian, I found some difficulty in communicating through the only member of the party speaking Russian. No complaint was made by the party speaking Russian of the treatment received by the refugees, although it seemed a hardship that they were compelled to leave the country in which they were established.

I learned that one of the party had advanced 2640 rubles to an Italian in the town where he lived, for which he held a receipt, and further details of which he can, of course, give you himself. I will do anything in my power to assist in collecting or securing this sum.

The best method, in my judgment, would be to put the claim in the hands of a lawyer in St. Petersburg.

I am, sir,
Your obedient servant,
(Signed) ROBERT MCCORMICK,
American Ambassador.

To His Excellency Mr. Inouye,
The Minister of Japan at Berlin.

On the 30th of March Mr. Inouye answered Mr. McCormick, saying that the safe arrival of the Japanese refugees to Berlin is entirely due to his kind efforts and care.

At that time, one of the party, a woman named Noshi Nishimoto, brought forward the complaint that her husband, a certain Natsuzo Nishimoto, had been forcibly detained on the way by the Russian Police Authorities at the Omsk station, on some false ground of suspicion.

So Mr. Inouye asked Mr. McCormick to make inquiries into the matter.

The answer is as follows:

Mr. McCormick to Mr. Inouye.

American Embassy,
St. Petersburg, April 15th, 1904.

YOUR EXCELLENCY:

I have the honour to acknowledge the receipt of Your Excellency's communication of March 30th, and to say in reply that I lost no time in making inquiries through proper channels as to Natsuzo Nishimoto, the husband of the unfortunate woman who was among the refugees to whom it was my privilege to render assistance as they passed through St. Petersburg. I also took occasion to speak personally to His Excellency Count Lamsdorff with reference to the case of Nishimoto, and he promised to telegraph that full information be furnished as to Nishimoto's offence, and that, unless this offence was of a character to make release impossible, steps be taken to bring about the discharge through whatever channel found necessary to enable Nishimoto to reach St. Petersburg, where I will take him in charge and provide him with whatever is necessary for his comfort and transportation to Berlin. . . .

I am, with high regard,
Your obedient servant,
(Signed) ROBERT S. MCCORMICK.

His Excellency Mr. Inouye,
Japanese Minister at Berlin, etc.

Mr. McCormick to Mr. Inouye.

American Embassy,
St. Petersburg, April 18th, 1904.

YOUR EXCELLENCY:

I have the honour to inform Your Excellency that there is in St. Petersburg at present a Japanese subject, a woman who was employed in the family of M. Stein, Secretary of the Russian Legation to Korea, who accompanied the family to this city before the beginning of the war. She is still in the employ of M. Stein, but wishes to leave Russia, where she is constantly apprehensive of possible trouble, and desires to go by direct boat to London upon the opening of navigation at St. Petersburg, which will occur in some ten days or two weeks. She is

afraid to go by rail to Berlin as she speaks only a little Russian and no German, while she speaks English fairly well, and would consequently be more comfortable on an English steamer.

As I do not consider it within my instruction from Washington, and as I have no authorisation from Your Excellency to forward any Japanese refugees except to Berlin, I shall await your assurance that the woman in question may safely proceed to London and be met on her arrival there by a representative of the Japanese Legation before sending her on her way.

She is kindly treated by the family with whom she lives and is in no sort of danger, but is naturally very anxious to return to Japan and to be among her own people once more.

I am, with high regard,
Your obedient servant,
(Signed) ROBERT S. MCCORMICK.

His Excellency Mr. Inouye,
Imperial Japanese Minister to the German Empire, etc.

Mr. Inouye sent a note, with date of April 21st, 1904, expressing his cordial thanks. As to the woman in question, who desired to be sent direct to London, he answered that there was no objection.

As for the number of Japanese subjects, besides the mentioned 12 persons, of whom no information whatever could be obtainable, the Japanese Minister Inouye made investigation with the following result:

In April, when the American Ambassador in Russia inquired of Count Lamsdorff, the Russian Minister of Foreign Affairs, concerning the welfare of Japanese subjects residing in Siberia, the answer was that some of the Japanese still lived voluntarily in Siberia, by virtue of the Imperial Ordinance, Art. I., issued November 14th, concerning the war, and that their not attempting to withdraw was, the Russian Minister believed, a clear indication that they were not destitute, as apparently seemed.

On the other side, however, the instructions of the Lieutenant of the Far East compelled all Japanese found in districts under his administration to withdraw.

These circumstances put together, the words of the Russian Minister of Foreign affairs cannot be readily accepted, for the lack of unified administration between the Central Foreign De-

partment and the Lieutenant in the Far East is a common occurrence in the Russian Empire.

On June 26th a report was made by the American Ambassador concerning a number of Japanese subjects assembled at Perm, who, according to the Russian edict, dated January 29th, 1904 (Russian calendar), had been put under American protection, and enters there from out various localities as Bragovestchensk, Chita, Irkutsk, Mukden, and others.

These Japanese, under special protection of the American Ambassador, were sent back to their home from Bremen via Berlin.[1] The following was the correspondence, dated October 4th, from Berlin, regarding this transaction:

Eight hundred and twenty-six Japanese refugees, all of them more or less destitute, have just passed through Berlin en route to Bremen by special trains from the Russian frontier. We expect the further arrival of about 115 refugees in a few days. The Japanese might have made arrangements with the Norddeutscher Lloyd Company to send them home by special steamer, *The Willehad*, leaving Bremen. Our thanks are especially due to the United States Ambassador to Russia for all his friendly efforts and care, without which none of the refugees would have been able to reach Germany in safety.

The Willehad, which departed from Bremen on October 24th, arrived at Nagasaki on December 9th.

Soon after the departure of that group, the following report was sent in:

More than 30 Japanese are still left in Siberia in a destitute condition.

The following was the report made by the American Ambassador concerning the matter:

Mr. McCormick to Mr. Inouye.

American Embassy,
St. Petersburg, 11 February, 1905.

YOUR EXCELLENCY:

With reference to the Japanese remaining in Siberia at Veliky Usting, I had an opportunity yesterday to consult with Prince Hilkoff, the Minister of Ways and Communication, in the hope that some

[1] See "The Russian Inhumanity, pp. 35–38."

plan might be devised to have them repatriated immediately via Berlin, as in the case of those who went forward some three months ago.

I found, however, that while this was not absolutely impossible, it was not practicable at this season of the year, in view of the fact that those of your countrymen who, unfortunately, still remain in Siberia would have to go by a very circuitous route, involving a thousand or more miles of unnecessary travel, and over a line more or less overburdened by the demand made upon it at this time. By travelling about 175 miles by sleigh they could reach the railroad at a point not far east of Perm, but to cover this distance at this season of the year would involve great hardship and suffering during the sleigh journey, and possibly serious consequences thereafter.

For this reason it seems best to me that they remain where they are until the opening of the spring, in the mean time being provided with what is necessary for their sustenance and comfort.

Prince Hilkoff manifested every willingness to meet the situation and would have provided transportation had I only asked for it.

I now learn that the delay in sending in an account for the transportation, concerning which I have already written you, is due to an error made by the agent at the point where the Japanese took train, involving an overcharge of something like 900 rubles. The accounts, therefore, had to be sent back, and Prince Hilkoff has undertaken to have them presented to me with as little delay as possible so that we may render account to you for the sum expended and remit any balance remaining in my hand.

I avail myself of this occasion to renew to Your Excellency the assurance of my high consideration.

(Signed) ROBERT S. MCCORMICK.

His Excellency Mr. Inouye,
Imperial Japanese Minister at Berlin, etc.

Mr. McCormick to Mr. Inouye.

American Embassy,
St. Petersburg, 13 February, 1905.

YOUR EXCELLENCY:

I am this day in receipt of a telegram from one of the Japanese at Veliky Usting, Isaworg by name, stating that, owing to the high price of provisions, it will cost about 40 copecks per day per man to support himself until such time as they can be repatriated.

Of course I have no means of verifying his figures, but in view of the sum allowed for taking care of those whom we patriated in October these figures seem excessive. Granting, however, that the above figures are correct, and that it will be two months before river navigation opens, it will cost about 720 rubles to provide food alone, and something additional may be necessary for those who are in need of warm clothing, although I have not received any information to this effect.

I assume that it is your pleasure that I remit the sum above indicated, and have already sent some 300 rubles to provide for necessities up to to-day.

I have the honour to be
Your Excellency's obedient servant,
(Signed) ROBERT S. MCCORMICK.

His Excellency Mr. Inouye,
Imperial Japanese Minister at Berlin, etc.

On the 31st of May, 1905, Mr. Inouye forwarded the information that through the kind endeavours of the United States Ambassador, and with the friendly assistance of German authorities, twenty-nine refugees from Siberia (twenty-four men and five women) had safely arrived in Berlin May 29th, that they would leave Bremen by the German steamer *Prinz Heinrich* June 7th, and that the first port of call would be Nagasaki.

The winter season having passed, and the refugees not yet having been sent back, Minister Inouye asked Mr. Meyer, the new American Ambassador, to urge the Russian Government to discharge her duty. On May 21 those refugees leaving Russia came back from Bremen via Germany.

The following document is attached, as in other instances to bring to light the efforts of the American Ambassador:

Mr. Meyer, the new American Ambassador, to Mr. Inouye.

St. Petersburg, May 15, 1905.

YOUR EXCELLENCY:

I have the honour to inform you, in reply to your notes of the 27th of April and 10th of May, that I have made all the arrangements necessary for the repatriation of the 28 Japanese subjects who have been detained at Velikiousting. As they will be ten days on the road, they may be expected to arrive at the German frontier about the 30th of May. I will let you know the exact date of their arrival at Wirballen as soon as I am informed of their departure from Yoroslaw. The journey between this latter place and the frontier is from 5 to 6 days and will give you time to arrange for some one from your legation to meet them at Wirballen.

I avail myself of this occasion to renew to Your Excellency the assurance of my high consideration.

(Signed) GEORGE VON LENGERKE MEYER.

His Excellency Mr. Inouye,
Imperial Minister of Japan, Berlin.

Mr. Meyer to Mr. Inouye.

Embassy of United States,
St. Petersburg, May 21st, 1905.

YOUR EXCELLENCY:

I have the honour to acknowledge the receipt of your note of May 20th, in answer to which I telegraphed you on the 22nd instant as follows:

Your compatriots, 28 in number, left Onsting yesterday, Sunday, the 21st, en route for Wirballen. Will wire later approximate arrival at frontier.

Yesterday I telegraphed you:

"Twenty-nine refugees will probably reach frontier by end of month."

In explanation of the additional member of the party of refugees, I have to inform Your Excellency that Mr. Wassilieff, late Russian Vice-Consul at Kobe, Japan, brought with him to St. Petersburg a Japanese maid, Katsu Fukuyama, 40 years old, resident of Hiogo, who now desires to return to Japan and in whose behalf Mr. Wassilieff has requested me to permit her to join the Japanese now en route. All arrangements have been made for her to leave Russia without molestation.

I am unable to inform Your Excellency at this moment when this woman will join the party, but it will be, if not at the frontier, at some station before, so that when your countrymen are turned over to your representative this woman will be of the number.

I avail myself of this occasion to renew to Your Excellency the assurance of my high consideration.

(Signed) GEORGE VON LENGERKE MEYER.

His Excellency Mr. K. Inouye,
Japanese Minister, Berlin.

On the 3rd of May the United States Ambassador to Russia gave information to the effect that he had received intimation from the Russian Foreign Office that there were in the province of Amur 63 Japanese who would be sent to Stryetensk; and that besides these, there were some prisoners of war in the Trans-Baikal province, consisting of a major, his wife, five soldiers, and an interpreter. The United States Ambassador took steps to see that they were provided with facilities to reach Berlin.

Above are given only a very few of the many instances that might be cited to set forth the great and unceasing efforts exerted by the United States for the protection of Japanese interests during the war. To attempt to enumerate them all, so

as to show Japan's indebtedness to the United States, would require volumes; the single instance above given serves well as an illustration.

No judicious reader could possibly glance over these pages without being made aware of the book's intention, deeper than it may apparently seem, to bring to light the friendly attitude which the United States Government never failed to preserve during the withdrawal of the Japanese subjects who were found in Russian territories and in the land occupied by Russia. It has been an earnest endeavour to make both the American and Japanese public well acquainted with facts hitherto comparatively little known. Peace among civilised nations must be the pedestal upon which international intercourse is to be placed; and if any two friendly nations breed estrangement, however slight, because of a sensational and groundless misunderstanding, fermented among the uneducated classes, then the more refined and the highly educated should be largely held responsible for the consequences. What perhaps seems a too minute exposure of details illustrative of the Americo-Japanese friendship, surely will not be regarded as casual, when viewed in such a light.

CHAPTER III.

DAYS OF GRACE FOR THE ENEMY'S VESSELS AT THE OUTBREAK OF WAR.

The most important commercially of the cases in which days of grace were granted occurred when, at the commencement of hostilities, belligerents gave permission to private vessels of the enemy to depart from their ports within a certain time unmolested. Sometimes a right to enter as well as leave is granted. Sometimes the set period is long, sometimes short. Everything depends upon the liberality of the combatant powers. Strictly speaking, the outbreak of war gives a State a right to capture all vessels of the enemy it finds, as long as the seizure does not take place in neutral waters. Indeed, until about a century ago the custom obtained of levying, in anticipation of hostilities, what was called an embargo on vessels of a prospective enemy. That is to say, an enemy's merchantmen lying in the ports of a State that contemplated a war were detained in order that there might be a rich harvest of prizes as soon as the expected war broke out. But since then the interests of commerce have prevailed over the desire for spoil. Imperial maritime powers, on becoming belligerents, have issued proclamations, giving merchant vessels of the enemy found in their ports at the commencement of hostilities a certain fixed time during which they are free to depart unmolested.[1]

It was until lately the practice of Great Britain to seize as prizes all vessels and cargoes belonging to an enemy found within her borders or bound for her territorial waters or harbours on the outbreak of war; but even this appears to have

[1] Lawrence, *War and Neutrality in the Far East*, p. 49.

been given up. On the outbreak of the Crimean war both Great Britain and France allowed Russian merchant vessels then in British or French ports six weeks to complete their cargoes and depart unmolested. The same exemption was extended to all Russian merchant vessels which, prior to the date of the Order in Council, had sailed from any foreign port for any British port, such vessels being allowed to enter and discharge their cargoes and return unmolested to any port of their own country not under blockade. The same policy was pursued by France at the outbreak of the Franco-German War in 1870, the privilege of free departure with safe conduct being granted to the enemy's ships then in French ports, the privilege of entry and departure being also granted to the enemy's vessels that had begun to load goods on French account at any time before war was declared. Germany went still farther and issued a declaration altogether exempting private vessels and cargoes belonging to the enemy from capture. This declaration was, however, subsequently rescinded, and was probably only intended to force the French Government into a similar course.

Subject to this exceptional practice, however, the right of seizure would still be exercisable in respect of the enemy's vessels or property found within or bound for the territory of the other belligerent after the outbreak of war. In the case of the *Jahanna Emilie* (Spinks, 14), 1854, Dr. Lushington laid down that it was legitimate for any person to take possession of and to assist the Crown to proceed against the enemy's property found in any part of the United Kingdom, unless it were protected by license or declaration from the Crown.[1]

The most liberal indulgences ever granted in this respect to an enemy's trade are to be found in the Proclamation of President McKinley.[2]

The details are as follows:

1. The neutral flag covers the enemy's goods, with the exception of contraband of war.

[1] Pitt-Cobett, *Leading Cases*, pp. 157–158.
[2] *International Law Situation with Solution and Notes*, 1901, pp. 150–159.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish Government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade, issued on April 26, 1898, at the commencement of the late war between the United States and Spain. Spanish merchant vessels in American ports were allowed till May 21 for loading cargoes and departing, and were not to be captured on their return voyage unless their cargoes included contraband of war, or Spanish military or naval officers, or despatches to or from the Spanish Government. Further, the enemy's merchantmen which had sailed before April 21, the day on which the war broke out, from any foreign port to any port of the United States, were allowed to enter such port, discharge cargo and depart without molestation, and if met at sea on the return voyage to any port not under blockade were to be exempt from capture by American cruisers. Moreover, these liberal rules received extension from the judiciary. In the case of the *Buena Ventura*, it was held by the Supreme Court of the United States that Spanish vessels came within the "intention" of the President's Proclamation if they had sailed from any American port on or before May 21, even though the departure took place before the war began. Acting on his interpretation, the Court released an enemy vessel which had sailed from Ship Island, Mississippi, on April 19, two days before the commencement of hostilities, and was captured at sea on April 22, a day after the outbreak of the war.

In the second Hague Conference the following convention was passed:

Convention Relative to the Status of Enemy Merchant Ships at the Outbreak of Hostilities.

ARTICLE I.

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

ARTICLE II.

A merchant ship unable, owing to circumstances of *vis major*, to leave the enemy port within the period contemplated in the above article, or which was not allowed to leave, cannot be confiscated.

The belligerent may detain it, without payment of compensation, subject to the obligation of restoring it after the war, or requisition it on payment of compensation.

ARTICLE III.

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be confiscated. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such case provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After touching at a port in their own country or at a neutral port, these ships are subject to the laws and customs of maritime war.

ARTICLE IV.

Enemy cargo on board the vessels referred to in Arts. I. and II. is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.

The same rule applies in the case of cargo on board the vessels referred to in Art. III.

ARTICLE V.

The present convention does not affect merchant ships whose build shows that they are intended for conversion into warships.

The brief observation on this Convention by Dr. J. B. Scott is worthy of quotation here: [1]

"The sixth is the convention concerning enemy merchant ships found in enemy ports or upon the high seas at the outbreak of hostilities. Custom forbids the capture of enemy vessels within the port of the enemy on the outbreak of hostilities and allows them a limited time to discharge or load their cargo and depart for their port of destination. The attempt was made to establish this custom or privilege as a right. The proposition, however, met with serious opposition, and, instead of the right, the convention states that it is desirable that enemy ships be permitted freely to leave the port. The convention, therefore, was restrictive rather than declaratory of existing international practice. The same might be said of another provision of the convention concerning the treatment of enemy merchant ships upon the high seas. It may be said that the expression of a desire is tantamount to a positive declaration, but, strictly construed, the convention is not progressive. It lessens rights acquired by custom and usage, although it does, indeed, render the privilege granted universal. The American delegation, therefore, refrained from signing the convention."

The author quite agrees with his opinion.

At the commencement of the Russo-Japanese War, Japan published the following Imperial Ordinance under date of the 9th of February, 1904:

We hereby sanction the rules concerning the exemption from capture of Imperial Russian merchant vessels and order the same to be promulgated.

No. 20, Imperial Ordinances.

ART. I. Those Imperial Russian merchant vessels that shall happen to be in the ports of Japan at the time when this Ordinance comes into operation shall be allowed till February 16, 1904, to discharge or load their cargoes and to depart from such ports.

ART. II. Any such Russian merchant vessel that shall take her departure from Japan in accordance with the foregoing rule shall be exempted from capture, if it shall be plain by the ship's papers certified by the authorities of Japan, that she departed from a port of Japan on discharging or loading her cargo before the expiration of the period prescribed in the above article and that she is on her way from such a port to the nearest port of her own country or leased territory or of her destination, excepting the case when she shall have touched at a port of her own country or leased territory on her way.

[1] *The American Journal of International Law*, January, 1908, pp.18–19.

ART. III. Those Imperial Russian merchant vessels that shall have sailed prior to February 9, 1904, from any foreign port for any port of Japan, shall be allowed to enter such a port of Japan, and forthwith to discharge her cargo and to depart therefrom.

(ART. II. is to be applied to those Imperial Russian merchant vessels that shall have departed from Japan in accordance with the above Clause of this Article.)

ART. IV. The clauses of this Ordinance are not to be applied to those Imperial Russian merchant vessels having on board export prohibited goods, or contraband men, or contraband goods, or contraband despatches.

This Ordinance shall come into operation on the day of its promulgation.

A few observations on this Ordinance will be made, starting with some remarks on the opinion of Dr. Lawrence. He says:

We look in vain for such liberality in the present conflict. The Japanese Imperial Decree of February 9, 1904, exempted from capture Russian merchantmen that were leaving Japanese ports up to February 16, and also those that were sailing direct for Japan up to that date from non-Japanese ports, and, after discharging cargo, should keep on the return voyage to a route marked out for them. In every case the indulgence is made conditional upon the absence from the cargo of contraband of war. The second article of the Czar's Rules, issued on February 28, granted permission to Japanese ships of commerce found in Russian ports "at the time of the Declaration of War," which was made on February 10, to remain without molestation, "for such a period as may be necessary, in proportion to their loading requirements, but which should in no case exceed forty-eight hours, counting from the moment that the present declaration was published by the local authorities." The Russian indulgence, like the Japanese, was made to depend upon the absence of contraband of war from the cargoes.

Thus the days of grace granted by Japan amounted to but seven. Russia gave a variable time, it being certain that the local authorities in all parts of her vast empire would not publish the Czar's declaration on the same day. But the period of forty-eight hours, which was the utmost that could elapse between its publication and the departure of the enemy's vessel, is very short, and contrasts strongly with the thirty days which might have been enjoyed under the Proclamation of President McKinley. It may be assumed that

Japanese vessels departing in accordance with the Czar's Order are to be free from capture on the return voyage, though this is not expressly stated. But even so, their privileges are small compared with those accorded to Spanish vessels by the United States in 1898; and the case of those that are on their way to Russian ports when the war broke out is not mentioned at all. It is too early yet to pass judgment upon the whole matter. The full facts are not at hand; and there is no opportunity of weighing the decisions of Prize Courts. But we can hardly escape the conclusion that commercial interests will not prove so potent as to mitigate the strict rights of belligerents in this war as in other recent struggles. The sea-borne trade of Russia in the Northern Pacific is not large in extent or enormous in value. She can afford to see it suffer with equanimity. Japan, on the other hand, has much to lose. Of late the increase of her mercantile marine has been as remarkable as the growth of her fighting navy. She has taken over a large number of its best vessels to act as transports. It is impossible to exaggerate the value of such service to a State which must attack its foe with armies sent across the seas. Perhaps it was the consciousness of this fact which caused Russia to cut down her days of grace to a minimum. The incident should be a warning to nations of what they may expect if they should be engaged in war with a maritime power. In this matter, when belligerents are bound by no definite rules of universal acceptance, they will naturally consult their own interests, though it is to be hoped that cases will sometimes occur in which other considerations will be present to their minds. A power which sees a chance of striking a severe blow at its enemy's trade by cutting the days of grace down to a minimum, is almost certain to do so, especially if its own sea-borne commerce is so small that little is to be feared from retaliatory measures.

The essential points of this opinion are two; blaming, firstly, the inadequacy of the days of grace, and, secondly, the lack of a clause providing for the exemption from capture of the enemy's merchant vessels that had departed from Japan prior to the outbreak of hostilities.

Of the first point, it may be stated with confidence that the days of grace of one week were sufficient for Russian ships to enjoy the full benefits of exemption, considering the nature of marine traffic, commercial interest between Japan and Russia, as well as the position of the commercial ports in the Far

East; consequently the one week's grace was adopted by the experienced experts of the Japanese Navy.

With regard to the second point, such a clause was intentionally omitted at the time of publishing the Ordinance as a result of careful consideration, and those Russian vessels that had departed from Japan prior to the outbreak of war were not allowed to enjoy the privilege of exemption from capture.

As a reason for this intentional omission of such a clause, reference is made to the fact that at the time when the diplomatic relations with Russia were in a critical condition and war was most likely to break out at any moment, there were several Russian steamers that had left Nagasaki and other ports of Japan for Port Arthur and other ports, some of which were suspected of having on board various documents detrimental to the interests of Japan. In times of peace, there are no existing contraband despatches; which circumstance compelled Japan to abstain from taking any steps towards such Russian steamers as gave reasonable cause to invite suspicion. There were also several Russian steamers that were suspected of carrying coal, arms, and other warlike articles on board; but they were not restrained from departing for the same reason. If the Russian ships that left Japan before the outbreak of war had been exempted from capture, those suspected vessels would naturally have been also exempted from capture as a matter of course. *It should not be forgotten that a search at sea is in most cases rather incapable of discovering contraband despatches concealed in a ship. Even contraband goods often escape discovery, when hidden among other cargo.* It was during the Chino-Japanese war that the *Yik-sang* carried on board 224 cases of ammunition, each case containing 10,000 packets, under the disguise of Chinese books. At the time of the first search, the ammunition was overlooked by the Japanese officers who inspected the steamer; but some arms having been found later in another steamer, which had been transhipped from the *Yik-sang*, a second search was made of the suspected steamer; the result of which was the discovery of the disguised ammu-

nition.[1] The case of the *Yik-sang* is an example showing how difficult it is to discover contraband despatches or contraband goods by a search at sea. This it was that induced Japan to omit a clause providing for the exemption from seizure of those Russian merchant vessels that had left Japan prior to the outbreak of hostilities, it being certain in most cases to result in practical disadvantage for Japan to exempt those Russian vessels under suspicion; but to reserve the right to detain and bring them to a port of adjudication in case of closer investigation being found necessary, irrespective of the result of a search made on the open sea.

What merchant vessels are to be exempted from capture is another question raised on this Ordinance. According to the opinion of the Japanese Prize Court, a big whaling boat (over 100 tons) did not come within the rating of a merchant vessel, and this opinion was insisted upon when the whaling boat *Kotic* was captured during the period fixed for exemption from appropriation. The reason offered by the Court for this capture was that the object of the Ordinance was to protect commercial interests, and that the privilege of exemption was therefore limited to merchant vessels exclusively, while whaling vessels were outside of that meaning.

There was another reason in refusing the extension of the privilege of exemption to the *Kotic*. The reason is that she had done some acts in the interests of the Russian Government and had not confined herself to the proper business of whaling. For this reason no objection can be made to making her a prize; but a protest rightfully goes out against the reasoning on the ground that fishing boats are not merchant vessels. The word "merchantman" is a word in contrast with the word "man-of-war," showing one of the two categories of the generic term "ship," and comprises every ship which belongs to either a company or individual, no matter whether it may be a cargo boat, passenger boat, work boat, or whaling boat. According to the Prize Court Regulations of Japan, the vessels to be

[1] *Cases on International Law during the Chino-Japanese War*, pp. 71–112.

exempted from capture are clearly stated to be lighthouse boats, cartels, coast fishing boats, and ships engaged exclusively on a voyage of scientific discovery. It is meant by this clause that all the enemy vessels shall be captured, except those enumerated; consequently it must be the meaning of the Ordinance that, although all the enemy vessels other than those enumerated in the Regulations are to be captured, yet they shall be exempted from capture specially during the days of grace. It therefore follows that the opinion of the Prize Court, though it is quite good enough in confiscating the *Kotic*, cannot be said to be correct in considering it to be the intention of the present Ordinance that those for exemption from capture were the enemy's merchant vessels in the narrow sense only.

CHAPTER IV.

EFFECTS OF THE OUTBREAK OF WAR ON FOREIGNERS IN ONE OF THE BELLIGERENT STATES.

If construed in accordance with the English school, all persons domiciled in the territory of one belligerent, not only belligerent subjects, but foreigners also, are contaminated by the hostile character of that territory, and consequently are deemed hostile by the opposing party, for "domicile, not citizenship, is the primary test of subject character under the Laws of War and Neutrality," and "all persons, whether natives or foreigners, who are domiciled in belligerent territory, or in places under belligerent military occupation, may be treated as hostile by the opposing belligerent."

The aim of this chapter, however, is not to deal with the legal effects of the outbreak of war, but to consider, as one of the effects of the outbreak of war, the question of a war tax upon foreigners who lodged a protest with the Japanese Government.

To lay a firm basis for the argument, extracts are arranged below, from treaties between the Powers and Japan, which bear on the topic under consideration.

Japan and Great Britain.

August 25, 1894.

ART. II. The subjects of either of the contracting parties residing in the dominions and possessions of the other shall be exempted from all compulsory military service whatsoever, whether in the army, navy, national guard, or militia; from all contributions imposed in lieu of personal service, and from all forced loans or military exactions or contributions.

This term is also prescribed in many other treaties between Japan and other Powers, namely:

Japan and the United States, ...	Art. I., par. 5.
Japan and Italy, ...	Art. II.
Japan and Russia, ...	Art. I., par. 5.
Japan and Denmark, ...	Art. I., par. 5.
Japan and Germany, ...	Art. II.
Japan and Belgium, ...	Art. I., par. 5.
Japan and the Republic of Peru, . . .	Art. I., par. 5.
Japan and Sweden-Norway, ...	Art. I., par. 5.
Japan and Netherlands, ...	Art. I., par. 6.
Japan and Switzerland, ...	Art. II., par. 6.
Japan and Spain, ...	Art. II.
Japan and Portugal, ...	Art. I., par. 5.

Japan and France.

Traite entre le Japon et la France.

ART. III., par. 2. Ils ne seront astreints à aucun service obligatoire, soit dans les armées de terre ou de mer, soit dans les guardes ou milices nationales. Ils seront exempts de toutes contributions imposées eu lieu et place du service personnel, de tous empeunts forcés et de toute autre contribution extraordinaire, de quelque nature que ce soit.

Japan and Austria-Hungary.

ART. I., par. 4. Ils ne seront contraints, sous aucun prétexte, à subir des charges ou à payer des taxes, autres ou plus élevées que celles qui sont ou seront perçues sur les nationaux ou les sujets de la nation la plus favorisée.

ART. II. Les sujets de chacune des Parties contractantes qui résident dans les territoires de l'autre, ne seront astreints à aucun service militaire obligatoire, soit dans l'armée ou la marine, soit dans la garde nationale ou la milice; ils seront exempts de toutes contributions imposées en lieu et place du service personnel et de tous emprunts forcés, de toutes exactions ou de contributions militaires.

Sont toutefois exceptées les charges qui sont attachées à la possession d'un bien-fonds, ainci que les prestations et réquisitions militaires auxquelles tous les nationaux peuvent être appelés à se soumettre comme propriétaires, fermiers ou locataires d'immeubles en tant que la possession d'un bien-founds ou d'immeubles sera permise.

The Imperial Diet of Japan, which closed its extraordinary session on the 23rd of March, 1904, gave unanimous consent to the War Budget as well as to a bill authorising the Government to raise a loan for the prosecution of the war and also passed the War Taxation Bill.

On March 31, 1904, the extraordinary special taxation act was issued, as the result of which imposition on Imperial subjects was made much heavier than before. Concerning the protest, which the said act occasioned among foreigners living in Japanese territory, the following was the view held by that government:

"Some foreigners resident in Japan are objecting to the imposition of special taxes provided for by Law No. III., promulgated on the 31st of March last, on the ground that the taxation under the said law constitutes extraordinary contribution from which foreign residents are exempted by virtue of Art. II. of the treaty between Japan and Austria-Hungary, Art. III. of the treaty between Japan and France, and similar articles in other treaties. Some of the foreign representatives to Japan are said to have asked their governments for instructions on the subject.

"A careful perusal of the above-mentioned articles of the treaties between Japan and the Powers will at once show that Art. I., last Paragraph, of the British treaty; Art. II., first Paragraph, of the French Treaty, and similar paragraphs of other treaties deal with all ordinary charges, taxes, etc., and stipulate that in these matters foreign residents in Japan are entitled to equal treatment with Japanese, but certainly not to more favourable treatment than the latter. It is only in Art. II. of the British Treaty, Art. III, second paragraph of the French Treaty, etc., that cases are provided for exempting foreigners from certain obligations. These cases are exclusively for the time of emergency where normal proceedings are dispensed with and military authority is called upon to exercise the necessary power in an exceptional manner dictated by the circumstances. It follows therefore that the taxes in question, being established by a law which was presented by the government, voted by the Diet, and sanctioned and promulgated by His Imperial Majesty, all perfectly in accordance with due ordinary processes, can by no means be taken as military exaction or extraordinary contributions, such as would exclude

foreign residents in this country. On the contrary, it is beyond all doubt that they are nothing but ordinary imposts of which foreigners must be expected to bear a fair share equally with the people of the community where they reside."

Below is inserted an extract from the *Kobe Chronicle*, as most typical of foreigners' views:

The Kobe Chronicle.

Wednesday, April 13th, 1904.

Foreigners and the New Taxation.

At the recent meeting of the Yokohama Board of Trade a sort of informal protest was made regarding the consumption taxes which the government has imposed with a view to assisting to find means for the prosecution of the war. From the brief reports in our Yokohama contemporaries it is somewhat difficult to understand exactly the nature of the objections that were raised. According to the report in the *Japan Herald*, Mr. Griffin remarked that the sugar consumption-tax was a violation of the treaty, while, according to the *Gazette*, the same speaker seems to have applied his remarks to the consumption taxes in general. If the reference was to the consumption taxes on sugar, it would at first sight appear difficult for foreign merchants to raise objection on the ground that it forms a violation of the treaties. The Protocol to the British Treaty with Japan of 1894 has the following provision: "It is understood between the two high contracting parties that, if Japan thinks it necessary at any time to levy an additional duty on the production or manufacture of refined sugar in Japan, an increased Customs duty equivalent in amount may be levied on British refined sugar when imported into Japan, so long as such additional excise duty, tax, or inland duty continues to be raised. Provided always that British refined sugar shall in this respect be entitled to the treatment accorded to refined sugar being the produce or manufacture of the most favoured nation."

Under this clause the Japanese Government would seem to have full right to impose a consumption tax on sugar unless some other convention specifically limits that right. But the objection taken to the consumption tax would seem to be that, so far as the import of articles specified under it are considered, it is exactly as if the additional import duty were imposed immediately, instead of the stipulated six months' notice being given. That this is so appears very clearly from the statement in the appendix to the law providing for special taxation. It is there provided that with regard to the consumption tax on sugar of No. 1 description, molasses, and kerosene oil, the tax will be imposed after the lapse of six months from the date that the law goes into operation. Now the abolition of the tax on these articles is coincident with the coming into operation of the increased import duties upon

them, which, as we have said, the government is under a conventional obligation not to impose until after six months' notice has been given. The result is that while the letter of the treaties is observed by the six months' notice, it is evaded in spirit by the imposition of a consumption tax which is to all intents and purposes equivalent to an increased duty on the imported article. The case may be stated briefly thus:

Under the treaties, Japan binds herself to give six months' notice before an alteration of the statutory import tariff goes into effect. An occasion arises when it is necessary to impose additional taxation at the earliest possible moment. Debarred by the provision in the treaties from increasing duties immediately, a consumption tax is imposed under which the goods have to pay an equivalent of that duty as an inland tax before they can be taken for consumption out of the godowns in which they are stored. From this point of view it would certainly seem that the spirit of the treaties in this matter is violated, and that the foreign merchant who has made his contracts for months in advance has a legitimate grievance, for he will find it difficult in many cases to induce customers to take delivery unless he himself agrees to bear the increased taxation. It is to be hoped that when this injustice is pointed out, the consumption taxes, in so far as they affect the duties upon imported articles, will be suspended in operation for the six months necessary for which notice must be given of changes in the tariff.

With regard to the increased levies on the business and income taxes, it may be expected that instructions will be given to the various taxation bureaus by the Finance Department, pointing out that according to the treaties the increased levy must not be made upon foreigners. The officials are now busily engaged making up the assessments for the business tax, and the work upon the income-tax assessments follows. It would undoubtedly save much trouble in the way of protest and facilitate collection if the officers of the Taxation Bureau had the matter brought formally to their notice by the department responsible.

We have already called attention to Art. II. of the Anglo-Japanese Treaty dealing with the matter, which reads:

"The subjects of either of the contracting parties residing in the dominions and possessions of the other shall be exempted from all compulsory military service whatsoever, whether in the army, navy, national guard, or militia; from all contributions imposed in lieu of personal service, and from all forced loans or military exactions, or contributions."

From this it is evident that it would be against the provisions of the treaties to impose on foreign residents in Japan the additional war levies on the business and income taxes by which those taxes are almost doubled. The indirect taxation foreigners can hardly escape, but the direct taxes, in the shape of military exactions or contributions, evidently cannot be imposed upon them. Foreigners can with some show of justice claim the exemption, seeing it is notorious that they already pay far more in proportion than their Japanese fellow-residents, for, as we pointed out when considering the question some time ago,

it is quite evident from the returns that foreigners are far more accurate in the statement of their income and business than the Japanese, otherwise the proportion of the tax which they pay in such a place as Kobe would not be so large as it is.

An argument, opposed to the above, was made public by Mr. Vickers, Professor of Political Economy of the Keiogijiku University, Japan.

To the Editor of the *Kobe Chronicle*.

SIR: In your leader of April 13th, you state—or rather take for granted—that foreigners are exempt from payment of the additional levies recently authorised on the business and income taxes. If this view rests solely on Art. II. of the Anglo-Japanese Treaty, as quoted by you, it does not seem to me likely that foreigners will escape the necessity of paying the additional levies. The war taxes authorised by the Diet do not appear to fall within any clause of the Article quoted by you. They are neither "military service" nor "contributions imposed in lieu of personal service," nor "forced loans" nor "military exactions or contributions." Presumably you thought of the "war taxes" as "military exactions or contributions." If so, it seems to me that the phrase "military exactions or contributions" is sure to be interpreted as exactions or contributions which are levied under military authority, taken by representatives of the military arm of the government, or at least levied in territory over which martial law has been proclaimed. In other words, taxes which have been regularly authorised by the Diet and which are collected in the usual way by the civil arm of the Government are not in the legal sense "Military exactions or contributions"—even though used for the support of the military establishment or for defraying the actual costs of war. Otherwise, why are not foreigners *wholly* exempt from payment of business and income taxes, a part of which are at *all* times applied to military purposes?

It seems worth while to call attention to this matter, because the impression that foreigners need not pay the increased levies might in some cases cause disappointment or inconvenience.

Very truly yours,
(Signed) E. H. VICKERS,
Prof. of Pol. Econ., Keiogijiku Univ.

Kobe, April 17th, 1904.

In short, the controversy was whether the taxes in question might be construed or not as included in "forced loans or military exactions and contributions" provided for in the treaties.

The positive argument is upheld by most foreigners, and the negative by Professor Vickers, who as a natural conclusion stated that foreigners have no right to be exempt from the new taxes.

A foreigner taking the side of the *Kobe Chronicle* tried to refute Professor Vickers' argument with a quotation from the latter part of the Austrian Treaty, Art. II., which, however, does not seem sufficient to overthrow the sound logic of Mr. Vickers.

By way of argument, readers are presented with an article opposed to that of Professor Vickers.

The Japan Daily Herald.

April 21st, 1904.

The War Taxes.

The question has been raised whether, under the treaties, foreigners can be called upon the pay the extra taxes levied according to the Extraordinary Special Tax Law, a translation of which we include in to-day's issue. With regard to the indirect taxes there appears but little chance of foreigners being exempted, though the arguments for the exemption of foreigners from the direct war taxes apply with no less force to these. It will be best first, however, to consider what these arguments are. Those who claim that foreigners are exempt from the payment of these taxes base their argument on the clause in the treaties which refers to the exemption of foreigners from military service and from contributions imposed in lieu of such service. In the Anglo-Japanese Treaty this clause reads:

"The subjects of either of the contracting parties residing in the dominions and possessions of the other shall be exempted from all compulsory military service whatsoever, whether in the army, navy, national guard, or militia; from all contributions imposed in lieu of personal service, and from all forced loans or military exactions or contributions."

The concluding sentence of this clause is taken as showing that the negotiators intended that it should cover all special taxes raised for the purpose of carrying on war. This view is upheld by the wording of the corresponding clause in the French Treaty with Japan, which reads:

Ils ne seront astreints à aucun service obligatoir, soit dans les armées de terre ou de mer, soit dans les gardes ou milices nationales.

Ils seront exempts de toutes contributions imposées eu lieu et place du service personnel, de tous emprunts forcés et de toute autre contribution extraordinaire, de quelque nature que ce soit.

Here, it will be seen, the place of the words "military exactions or

contributions" is taken by "toute autre contribution extraordinaire, de quelque nature que ce soit." Now, whatever may be the case in regard to the Anglo-Japanese Treaty, it is claimed that the words in the French Treaty must apply to the increased taxes levied under the Extraordinary Special Tax Law. Although Art. I. of the law states but vaguely that the increased taxes are to defray the expenditure for a certain special purpose, in the article referring to the period during which the law is to remain in force, it is clearly stated that this term closes the year after peace is concluded. Thus there can be no doubt that the taxes are for military purposes and that they are "extraordinary taxes," or, in the words of the French Treaty, "contributions extraordinaires." Now if the clause quoted from the English Treaty does not refer to taxes of this nature, to what kind of taxes does it refer? Professor Vickers, of the Keiogijiku University, in a letter to the *Kobe Chronicle*, contends that the clause refers to exactions "levied under military authority, taken by representatives of the military arm of the government, or at least levied in territory over which martial law has been proclaimed." This view is not upheld by a perusal of the same clause in the French Treaty, which sums up in the words, "all other extraordinary contributions whatsoever." This also disposes of Professor Vickers' query as to why, otherwise, foreigners should not be wholly exempt from payment of business and income taxes, a part of which are at *all* times applied to military purposes. The answer is that such taxes are not extraordinary nor depend in duration on war-like movements. Thus, whatever construction may be placed upon the wording of the English Treaty, the French Treaty does not appear to admit of such a reading, since there is no equivalent phrase in the latter for the "Military exactions" of the former. These, briefly, are the arguments of those who claim that foreigners should be exempted from the increased taxes. As stated above, any exemption from the increase in the indirect tax, such as the consumption tax, the increased tax on articles of food, and the increased import duties, is impossible. There remain, however, the increases in the Land, Business, Income, Registration, Exchange, Shooting License, and Mining Tax, about which there should be no difficulty. The inclusion of both direct and indirect tax in the law, however, seems to point to the authorities either having considered the matter and decided that the treaties do not apply, or else having neglected to give any thought to the question. This latter is very improbable, and it may therefore be concluded that the authorities intend to collect the taxes from foreigners and Japanese alike. Those who claim exemption have certainly a very strong case, and unwilling as Japan should be to see any cause of friction arise between the authorities and the sympathetic foreigners who reside in Japan, the fact is natural that failure to abide by treaty obligations is a much more serious matter and likely to give rise to much more serious consequences. Cases have been brought under our notice—not by way of complaint, however—of soldiers being billeted on foreigners residing in Tokyo, an action quite contrary to the treaties. This is a small matter,

and the foreigners in all cases referred to it laughingly; but if the treaties are infringed in one instance, there is a probability that infringements may be made in another.

Among English newspapers published in Japan, the *Japan Times*, the *Japan Mail*, and the *Japan Daily Advertiser*, were of the same opinion as the Japanese Government about the matter. Below are annexed a few extracts illustrative of their tone.

Japan Daily Advertiser.

Yokohama, Monday, April 25, 1904.

War Taxes.

The question which has arisen in regard to the liability of foreigners for the payment of taxes raised for war purposes is a somewhat ungracious one, especially in view of the disposition which the alien communities here have shown to contribute their uttermost in aid of the various benevolent movements for the relief of the sufferers from the struggle. The mooting of the question may be taken simply as an illustration of the essential difference between a contribution and an exaction, the former being assented to with the utmost cheerfulness and good-will, while the least mention of a tax is sure to awaken a protest and a desire to find some way of escaping it.

Much stress is laid upon the wording of the provisions upon the subject in the Revised Treaties, the clause as expressed in the French version being much more explicit and seemingly wider in scope than that found in the English rendering, and it is therefore very natural that the issue should be raised. In all questions of interpretation, however, an endeavour should be made to get at the original meaning and general purpose of the insertion of the clause in such a document as a treaty. In this case, if we mistake not, the provision is based upon a general understanding between nations that in time of war foreigners dwelling in the land of a belligerent should not be liable to military duty in its behalf, nor be subject to the extraordinary exactions or inconveniences often incident to a state of war, such, for example, as having troops quartered upon them or being made to pay commutation for exemption therefrom. We doubt whether it was the original intent of the article upon the subject in the Revised Treaties with Japan to cover anything more in this regard, but that, of course, is a question for the international lawyers to decide. We apprehend that in this case it will be very difficult for them to draw the line in regard to the liability of foreigners to share the national burden. It is quite true that the taxes laid are extraordinary ones, but the question will come up as to when they began to be extraordinary. The whole period of preparation for the war, necessitating a large increase of the nation's armaments, has been marked by extraordinary taxation for this very purpose, a fact

which would seem to make it somewhat late now for foreigners to begin their protest.

Furthermore, though we cannot speak with absolute assurance upon the matter, we are under the impression that such a question would not be likely to be raised in a western land. If we mistake not, during the Civil War in America there was no distinction whatever made between native and alien residents in the matter of paying taxes incident to the great increase in the burden of the nation.

It will be far better, we opine, as it will certainly conduce to the maintenance of good feeling, to have the matter settled upon such general grounds, rather than to have it descend to the low plane of quibbling about the exact meaning or the interpretation which may possibly be put upon the words of the clause in a treaty.

A key to this somewhat complicated controversy, so zealously fought on both sides, is to be had by the following text in the Anglo-French Treaty:

Convention conclué a Paris, le 28 fevrier, 1882, entre la France et la Grand-Bretagne pour regler les relations commerciales des deux pays.

ART. XI. Les ressortissants de chacun des deux Etats seront exempts dans l'autre, de tout service militaire, de toutes requisitions et contributions de guerre, des prets et emprunts et *autres contributions extraordinaires qui seraient etablis par suite de circonstances exceptionelles,* en tant que les contributions ne seraient pas imposées sur la propriete fonciere.

A treaty not yet abolished is still available. Notwithstanding the existence of such a treaty between England and France, England during the North China Affair and South-African Disturbance imposed war taxes on foreigners without meeting with any apparent objection on the part of France and other countries. In view of the data above mentioned, it is really illogical to find such a strong protest against a similar measure resorted to by Japan bound by similar treaties.

The enlightened English public was convinced by the above logic of the legitimacy of the Japanese conduct, and began to advocate that Englishmen in Japan should pay war taxes.

On the 26th of June, 1904, the British Minister to Japan communicated to Baron Komura the fact that the British Government had just telegraphed to him that Art. II. of the

treaty between Japan and Great Britain was in their opinion not applicable in the present instance, and that the British residents in Japan could not invoke that article for exemption from the Extraordinary Taxes.

Great Britain and Portugal.

July 3, 1842.

ART. 1. .....

.....

They shall be exempt from forced loans, or any other extraordinary contributions not general, or not by law established, and from all military service by sea, or by land.

Great Britain and Russia.

January 12, 1859.

ART. XIV. The subjects of either of the two high contracting Parties in the dominions and possessions of the other, shall be exempted from all compulsory military service whatever, whether in the army, navy, national guard or militia. They shall be equally exempted from all judicial and municipal charges and functions whatever, as well as from all contributions, whether pecuniary or in kind, imposed as a compensation for personal service; and, finally, from forced loans and military exactions or requisitions.

Great Britain and Italy.

August 6, 1863.

ART. XV. The subjects of each of the contracting Parties in the dominions and possessions of the other shall be exempted from all compulsory military service whatever, whether in the army, navy, national guard or militia. They shall be equally exempted from all judicial and municipal functions whatever, as well as from all contributions, whether pecuniary or in kind, imposed as a compensation for personal service; and, finally, from forced loans and military exactions or requisitions.

The United States and Nicaragua.

June 20, 1868.

ART. IX., 2. The citizens of the United States resident in the Republic of Nicaragua, and the citizens of Nicaragua resident in the United States, shall be exempted from all forced or compulsory military service whatever, by land or sea; from all contributions of war, military exactions, or forced loans in time of war; but they shall be obliged, in the same manner as the citizens of each nation, to pay lawful taxes, municipal and other modes of imposts and ordinary charges, loans, and contributions in time of peace (as the citizens of the country are liable), in just proportion to the property owned.

The United States and Italy.

February 26, 1871.

ART. III. .....

.....

They shall, however, be exempt in their respective territories from compulsory military service, either on land or sea, in the regular forces, in the national guard, or in the militia. They shall likewise be exempt from any judicial or municipal office, and from any contribution whatever in kind or in money, to be levied in compensation for personal services.

Greece and Spain.

August 9–21, 1875.

ART. I., Parg. 3. Ils seront exempts de toute charge ou emploi municipal et de tout service personel, soit les armées de terre ou de mer, soit dans la garde ou milice nationale, ainsi que de toutes requisitions ou services speciaux de la milice et de toute contribution extraordinaire de guerre ou emprunt force, en taount que ces contributions et emprunts ne seront pas imposés sur la proprieté fonciere.

The United States and Peru.

August 31, 1887.

ART. II. .....

.....

.....; they shall not be called upon for any forced loan or extraordinary contribution for any military expedition, or for any public purpose whatever, nor shall they be liable to any embargo, or be detained with their vessels, cargoes, merchandise, goods or effects, without being allowed therefor a full and sufficient indemnification, which shall be paid in advance.

The United States and Servia.

For Facilitating and Developing Commercial Relations. (Signed at Belgrade, October 2–14, 1881.)

ART. IV. Citizens of the United States in Servia and Servian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea; whether in the national guard or militia; from billeting; from all contributions, whether pecuniary or in kind, destined as a compensation for personal service; from all forced loans, and from all military exactions or requisitions. The liabilities, however, arising out of the possession of real property, and for military loans and requisitions to which all the natives might be called upon to contribute as proprietors of real property or as farmers, shall be excepted.

CHAPTER V.

TRADING WITH THE ENEMY AND PROHIBITION OF THE EXPORT OF GOODS FOR WARLIKE PURPOSES.

Is it lawful or not for an individual of one belligerent nation to trade with an individual of the other, when all their diplomatic agents and consuls have withdrawn from both countries, as a natural consequence of hostilities? There are two sorts of arguments upon this point: Those of the first school argue against trading with enemies under such circumstances, on the ground that when hostilities once begin, the trade and communication between the belligerent subjects, unless specially permitted, is implicitly prohibited without any special notice; and, according to them, those who act contrary to this, are to be duly punished as trading with the enemy. But, those of the other school, confine hostilities to affairs between two states, without extending the same relation to individuals, so that it naturally follows that trading between subjects of the belligerent nations may be independent of national hostilities. Some of this school try to reinforce their argument by the theory that "trading liberty, being a natural right of mankind, cannot be interfered with by any warfare."

Believing that the readers of these pages are already well acquainted with the ordinary arguments on the point in question, a series of facts illustrative of the Japanese practice respecting trading liberty will be set forth, instead of going any further into these theoretical discussions.

Cases during the Chino-Japanese War.

Though ultimately fruitless, in the earlier days of the Chino-Japanese War, the Japanese Government negotiated

with the Chinese Government, through the American Minister, about the exemption of private property from capture at sea.[1]

A certain case induced a strict discussion in the Japanese Cabinet at that time upon the lawlessness of a Japanese subject trading with the Chinese.

A certain Japanese contrived to supply China with coal through the medium of a neutral then residing in Japan. In the end, the Japanese Government took no measures against it. Here is the opinion on the case of Professor Ariga.[2]

La deuxième question à laquelle donna lieu l'élaboration du décret[3] se rapportait au commerce des pays en lutte. Il existe sur ce point; en droit international, deux systèmes différents. L'un consiste à prohiber, en principe, le commerce entre les sujets du pays et ceux de l'adversaire, sauf la réserve d'une autorisation particulière (licence) qui est accordée en faveur de certains objets, de certaines localités, de certaines personnes ou colectivités. Tel est le système suivi, notamment, par la France, l'Angleterre, les États-Unis de l'Amérique du Nord, la Hollande et l'Espagne. Cette doctrine a reçu une application rigoureuse principalement dans les trois premiers de ces États. Le second système reconnaît comme règle la liberté du commerce: celle-ci ne peut être limitée que par des lois faits expressément dans ce but, et les restrictions qu'elles édictent ne doivent pas être étendues. C'est la théorie qui domine en Allemagne, et, bien qu'ell ne soit pas encore adoptée par l'unanimité des jurisconsultes de ce pays, elle s'accorde bien avec la tendance actuelle du droit international en temps de guerre: la guerre est une affaire d'État à État, non d'individus à individus. Dans la guerre de 1860 contre la Chine, la France et l'Angleterre elle-même autorisèrent leurs nationaux à commercer avec le pays ennemi. De ces deux systèmes si opposés, le gouvernement japonais, par des raisons théoriques et pratiques, n'hésita pas à préférer le second.

La liberté du commerce est un des droits naturels de l'homme, il n'y a aucun motif pour qu'elle soit supprimée de plein droit par la guerre. Si des considérations militaires l'exigent, il est d'ailleurs toujours facile d'émettre un order prohibitif interdisant le commerce de certains objets. Les considérations pratiques qui déterminèrent le

[1] The author's *Cases on International Law during the Chino-Japanese War*, pp. 9–10.
[2] Ariga, *La Guerre Sino-Japonaise au Point de Vue du Droit International*, pp. 27–28.
[3] Décret Impérial du 4 août 1894, relatif à la protection des Chinois au Japon.

gouvernement impérial n'étaient pas sans valeur. La prohibition du commerce avec Chine devait nuire au développement économique du Japon. Au début de la guerre, des journaux japonais avaient constaté que des négociants étrangers achetaient du charbon de terre au Japon pour le revendre à la Chine, et ils avaient fait entendre à ce sujet de vives protestations. Le gouvernement ne crut pas devoir tenir compte de ces reproches. Il pensa, non sans raison, que la Chine ne serait point dans l'embarras, quand même elle ne recevrait pas du Japon le charbon dont elle avait besoin; elle s'adresserait alors, pour se le procurer, à l'Angleterre ou à tout autre pays étranger. De la sorte, Podre prohibitif du Japon n'aurait servi qu'a lui faire perdre un débouché pour ses charbons; de ce fait, sans aucune compensation, le pays aurait subi un préjudice considérable. C'est pour cela que l'article ler a stipulé que les Chinois résidant au Japon pourraient continuer à vaquer à leurs occupations légales et pacifiques.

Thus, while engaged in hostilities with China, the export of coal to the enemy's land was winked at by the Japanese Government; and if winking at may be considered synonymous with implied recognition, the principle of the Japanese Government adhered to at that time must have been the opposite of the prohibition of trading with the enemy. However, the absence of any settled principle whatever most probably induced the Japanese Government to take such an indulgent step.

Later on, even during the Russo-Japanese War, no definite declaration was made on this subject, so that the author will propose his own argument towards the end of the present chapter.

In the course of the Russo-Japanese War, a case happened which involved the Japanese prohibition of exporting a certain sort of goods, not only destined for the enemy, but also for a neutral port.

It should be remarked in passing that horses were prohibited from exportation during the Chino-Japanese War and the North China Affair. And the reader should remember that the prohibition of exporting goods implies the prohibition of trading with the enemy, as a part of its provisions; at any rate

this is the case when the goods are destined for the enemy or a neutral state or their subjects.[1]

Below are arranged various cases bearing on this point which took place during the Russo-Japanese War.

In May, 1905, the Japanese Minister of the Army and Navy addressed the following letter to the Minister of Home Affairs:

We request you to interdict for the time being the exportation of any coal, on the suspicion of its being used by the enemy's forces.

P.S.—The supervision we are attempting with the above purpose needs to be supplemented by yours.

Cases of interdiction were as follows:

The British S. S. *Hatasu.* Consignor: Midushima Branch at Moji.

The steamer above mentioned was prohibited, on the 16th of May, from exporting 4500 tons of coal, consigned to the branch of M. M. & Company at Saigon.

The name of the steamer, uncertain. Consignor: Midushima Branch at Moji.

The steamer above mentioned was prohibited, on the 22nd May, from exporting 15,000 tons of coal consigned to the branch of M. M. & Company at Singapore.

The British S. S. *Hatasu.* Consignor: Takashima Co. at Moji.

The steamer above mentioned was prohibited, on the 22nd May, from exporting 7500 tons of coal consigned to Messrs. Shewan, Tomes & Co. at Hongkong.

The British S. S. *Langdale.* Consignor: Midushima Branch at Moji.

The steamer above mentioned was prohibitd, on the 23rd May, from exporting 5000 tons of coal consigned to Messrs. Shewan, Tomes & Co. at Hongkong.

The British S. S. ..... Consignor: Uryu & Co.

Loaded with 6200 tons of coal, destined for Tokunaga & Co. at Hongkong, and with 2300 tons of coal destined for Hongkong.

The American S. S. ..... Consignor: Yasukawa & Co.

Loaded with 4700 tons of coal destined for Hongkong.

On May 26, 1905, the steamers hereinafter mentioned were also stopped.

[1] It must be also noticed that Contraband of war is not the same as goods prohibited to export; because the contraband is destined for the Enemy's territory or sometimes to the army or navy in the Enemy's territory, or Enemy's warships on the high seas.

The British S. S. *Hermiston*, loaded with 5600 tons of coal destined for Singapore.

The Norwegian S. S. *Oscar II.*, loaded with 4000 tons of coal destined for Hongkong.

A complaint was made, referring to the cases of the *Hatasu* and *Langdale*, on May 25, 1905, as follows:

The British S. S. *Hatasu* was chartered in the middle of the present month to take coal from Moji to Saigon, but the work of loading was stopped by the local authorities on the 16th instant, as the export of coal from Japan to Saigon had been prohibited.

The agents of the vessel accordingly cancelled their previous contract, and made a fresh contract with the Japanese firm of Messrs. Takashina to convey a cargo of their coal to Hongkong on account of the firm of Messrs. Shewan & Tomes.

The representative of this latter firm declared that the coal was destined for Hongkong and would be consumed there.

However, the local authorities still refused to allow the coal to be loaded, on the ground that orders to that effect had been received from the Imperial Government. It would appear that another steamer named the *Langdale* was similarly prevented from being consigned to the same firm, although other British vessels were being allowed to load coal for conveyance to Hongkong.

The affair was settled by a notification from the Japanese Government containing the essential principles by which impartial treatment was dealt; and the fact that the *Hatasu* and the other steamer could not be considered as treated with particular disfavour was fully explained. The following is the Regulation at that time concerning the coal export:

Disciplinary Regulations of Coal Export.

1. The consignor or the consignee shall send in as caution-money twice the estimated cost of the coal to be exported to the Custom-house of the locality whence the shipment is to be sent out. Instead of the caution-money above mentioned, there may be substituted, if sanction is given by the Custom-house, a letter of security, signed by a bail, if found necessary.

2. The consignor or the consignee shall recover the caution-money or the letter of security, by sending in a certificate from the Japanese consul (or authorities nominated by the Custom-house of the port

of export) certifying that the said coal was unloaded at the proper port named.

If the certificate be not sent in within 60 days from the date of export, the caution-money, or the face value of the letter of security, shall be exacted.

3. An export by a vessel, destined for, or calling at, a port where a man-of-war belonging to the enemy is, or so expected in the future, may be subjected to prohibition.

The decision will be given by naval authorities.

The Author's Opinion on Trading with the Enemy.[1]

As for the provision for the future, I am not without opinion on what course we should take with regard to trading with the enemy.

Here I quote one theory and one precedent out of many English articles on trading with the enemy, upon which I believe our future course may be safely based:

Property of Allies' subjects trading with enemy confiscable. (Pitt-Cobbett, p. 175.)

The *Neptunus*, 1807. 6e, Rob. 403.

This case is cited as illustrating the application of the rule of trading with the enemy as between allies.

(Case)—During war between Great Britain and Holland, a ship belonging to a subject of Sweden, one of the allies of Great Britain, was captured by a British cruiser while on a voyage from Amsterdam with a cargo of pitch and tar. She was brought in for adjudication, and at the trial the case turned on the effect of a modified permission to trade with the common enemy in innocent articles on the part of an ally in the war.

(Judgment)—Sir W. Scott, in his judgment, stated that as between allies it must be taken as an implied, if not an expressed contract, that one state should not do anything to defeat the common object and interest. If one state permitted its subjects to carry on an uninterrupted trade with the enemy, the consequence might be to supply aid and comfort to the enemy, which might prove very injurious to the prosecution of the common cause and the interests of its ally.

It was not enough to show that no state allowed this practice to its own subjects; but it must be shown, either that the practice was of such a nature as could in no manner interfere with the com-

[1] An article prepared at the request of the Japanese Navy during the War.

mon operations or that such trade had the permission of the allied state. There being no such circumstances in the present case, the goods were therefore pronounced liable to condemnation.

According to Sir W. Scott, an alliance treaty, unless otherwise clearly contracted, presupposes that neither of the allies shall act in such a manner as to interfere in any way with the common interest and cause. Hence if either of the allies insists on trading freedom, whereas the other perseveres in prohibition, the natural consequence must be the supplying of the common enemy with assistance and convenience; that is to say, injuring the common interest and cause of the alliance.

In this way our free theory, as long as England, our ally, condemns allied subjects trading with the common enemy, must lead to no other result than to defeat the purport of our alliance implied as Sir W. Scott states; and to make our ships, although acting according to our law, liable to English capture, in case England and Japan come some day to fight against a common enemy.

Thus it must be practically imprudent for Japan to insist on trading freedom in view of the English prohibition policy.

Hence as for the problem how far our ships may maintain trading relations with the enemy, the same regulations and limits as those held by our ally may be recommended as adequate; for otherwise our merchant ships will be exposed to capture by English warships. In other words, our maritime trade should be regulated by the same prohibition policy as the English; limiting our subjects' trading with the enemy to certain places, articles, and persons.

Some will perhaps deem such a measure injurious to our economic welfare, but their anxiety may be easily refuted if they bear in mind that the English policy is far from being an absolute check on trade, but means simply trading under special permission.

PART II.

THE LAWS AND CUSTOMS OF LAND WARFARE.

CHAPTER I.

COMBATANTS.

The qualifications of a combatant have remained a question for many centuries; as, for instance, it occasioned fervent differences of opinion in the course of the Franco-Prussian War of 1870, until a definite decision was reached as the result of The Hague Conference.

ART. I. The laws, rights, and obligations of war apply, not only to the army, but also to militia forces and to bodies of volunteers, which combine the following conditions:

(1) Having at their head a person responsible for his subordinates;

(2) Having a fixed, distinctive badge, recognisable at a distance;

(3) Carrying arms openly; and

(4) Conforming in their operations to the laws and usages of war.

In countries in which the militia or volunteers compose the army, or form a part of it, they are included under the designation of "army."

ART. II. The population of a non-occupied territory who, at the approach of the enemy, take up arms spontaneously in order to resist the troops of invasion, without having had time to organise in conformity to Art. I., shall be considered as belligerents if they observe the laws and usages of war.

The principle Japan kept in view was to abstain from adopting the system of volunteers or *levees en masse*, as is well exemplified by the Imperial Ordinance of 8th August, 1894, which expressly disapproved the Organisation of a volunteer company. The following is from Dr. Ariga's work on the Chino-Japanese War: [1]

[1] Ariga's *La guerre Sino-Japonaise*, pp. 35–38.

Décision impériale sur la formation de bataillons de volontaires et décret y relatif du 8 août 1894.

Au Japon, le "volontariat" n'est pas un moyen de recrutement de l'armée régulière. Mais, lorsque les événements de Corée éclatèrent, des Japonais, dans les diverses provinces, adressèrent à leur gouvernement des pétitions pour obtenir l'autorisation d'organiser des bataillons de volontaires contre la Chine. Dès que la guerre fut déclarée. ces pétitions devinrent de plus en plus nombreuses on vit les délégués des provinces assiéger en foule le ministère de la guerre.

Si l'on jette aujourd'hui un regard rétrospectif sur les derniers événements, il est facile de juger des forces respectives des deux empires. On peut se convainere que les Japonais n'avaient, en définitive, nullement besoin d'auxiliaires. Mais, au début de la guerre, personne ne pouvait apprécier à leur juste valeur les forces militaires de la Chine; beaucoup devaient considérer comme un adversaire redoutable les troupes de Li-Hong-Chang et les cavaliers mandchouriens. Il était donc tout naturel que les patriotes japonais eussent quelque inquiétude sur l'issue de la lutte et voulussent venir en aide à leur pays en organisant des bataillons de volontaires. Si ces vétérans japonais, qui étaient fort nombreux dans l'Empire et qui étaient parfaitement exercés au maniement des armes, avaient en la permission de passer en Chine et d'y agir en toute liberté, armés de leurs sabres rendus sacrés par tant de faits brillants de leurs ancêtres, il en fut résulté pour le gouvernement de Pékin, une situation oraiment grave. Ils eussent été pour lui des ennemis fort sérieux; car la longue tranquilité dans laquelle le Japon avait vécu jusqu'ici pesait à leur ardeur guerrière. Une semblable organisation eut été cependant parfaitement légale he droit de faire usage de combattants irréguliers appartient à l'État qui prend l'offensive aussi bien qu'à celui qui est sur la défensive.

Le Japon n'aurait donc pas fait un acte indigne en permettant à ses volontaires de traverser la mer après les avoir embrigadés et revêtus d'un uniforme ou de quelque autre signe distinctif. On eut pu d'autant moins lui faire de reproches à cet égard que le gouvernement de Pékin, obstiné dans ses vieilles habitudes, fermé aux idées des nations civilisées, se refusait à faire aucune distinction entre les combattants et les non-combattants: ce gouvernement, pour exciter son peuple à résister à l'armée japonaise, avait en l'idée barbare d'apposer dans les villes et les villages affiches où il promettait un certain nombre de taëls à ceux qui rapporteraient la tête d'un général, d'un officier, d'un fonctionnaire ou d'un soldat japonais; la récompense variait selont le grade et la qualité de la victime.[1]

[1] *Ce fait est confirmé par la Revue générale de droit international public*, t. II. 1895, p. 123.

Notre Empereur pensa toutefois que des volontaires, qui n'avaient pas reçu l'instruction militaire d'une manière habituelle et constante, ne devaient pas valoir les combattants réguliers au point de vue de la discipline; il craignit que, par leur fait, la dignité de l'armée de l'Empire ne vint à se trouver compromise. Aussi n'hésita-t-il point à refuser leurs services. Il fit connaître ses intentions par un décret progulgué le 8 août, qui était ainsi conçu:

Nous, par la protection de nos aïeux et le concours de notre peuple, espérons maintenir et rauvegarder l'honneur et la gloire de la nation avec l'appui de nos forces de terre et de mer.

Nous sommes convaincu que l'organisation du volontariat par nos sujets des diverses parties de l'Empire est une manifestation de leurs sentiments les plus intimes de dévouement et de petriotisme.

L'État a ses organes nécessaires et le peuple a ses occupations constantes. Nous souhaitons que, hors le cas de réquisitions extraordinaires, nos sujets ne néglisent pas leurs occupations ordinaires, au prejudice du développement de plus en plus grand de la puissance productive du pays et de l'entretien des éléments de notre force et de notre richesse.

Nous ne saurions donc reconnaître dans la circonstance actuelle l'utilité du volontariat. Nous prescrivons à nos autorités locales de donner les instructions nécessaires, en conformité de cette intention.

Les armées d'expédition japonaises furent donc organisées avec des combattants réguliers, seuls dignes de figurer dans les troupes de terre d'une nation civilisée. Ces armées comprenaient deux groupes distincts. Le premier, que commanda le maréchal Yamagata, s'avança en Chine par la voie de Corée à destination de Moukden; le second, qui eut à sa tête le maréchal Oyama, débarqua directement à la presqu'île de Lia-Tong, et se proposa de s'emparer de Port-Arthur ainsi que de Wei-Haï-Wei, les deux clefs du golfe de Petchili.[1]

The same principle was preserved also during the Russo-Japanese War; although the sole exception happened when Japanese residents at Hwang-ju, Korea, organised a volunteer company under pressing circumstances. The fact was substantially as follows:[2]

Prior to the arrival of the First Army at Hwang-ju, Japanese residents there found themselves already exposed any moment to assaults of Russian troops, who might descend from the north, and that the Korean forces stationed there were

[1] *Cases on International Law during the Chino-Japanese War*, p. 171.
[2] A. Ninagawa, *Kuroki's Army and International Law*, pp. 51–52.

entirely ineffective to provide for such an emergency; so that a volunteer company was formed by forty-eight men who were not the heads of families.

The Japanese Volunteers at Hwang-ju, as well becomes civilised people, acted in perfect conformity with the stipulations of The Hague Conference.

1. The Japanese Volunteers at Hwang-ju were led by a certain member of the Japanese consulate there who was to be responsible for what his men might do.

2. They were in western dress with a red blossom-shaped badge pinned on their breasts, and had a helmet cap covered with white.

3. Each of them was armed with a *Schneider* musket.

4. Their conduct was regulated by martial laws and usages. They were, however, dissolved, without any actual engagement, on the arrival of the van of Japan's First Army.

Thus even this exception should be considered as a device resorted to under special circumstances by Japanese residents at Hwang-ju, and not as anything like a *levee en masse* projected by the Japanese Government.

In the course of the war, Russia organised a volunteer company in accordance with the Russian Mobilisation order issued at the outbreak of the war, which was to be directed for the defence of Saghalien and the East China Railway, according to information furnished on July 29, 1904, by a Berlin correspondent.

The United States Chargé d'Affaires in St. Petersburg transmitted to the Japanese Minister at Berlin a communication of the Russian Government, dated July 26th, in which the latter requested communication to be made to the Japanese Government of the formation of free companies of militia composed of Russian people in the Maritime Province, in the island of Sakhalin, and along the East China Railway line. Free companies of militia were to serve as guards, and in case of necessity as combatants, for which purpose the militia was furnished by the State with rifles and arms, without wearing

special uniform. They had, as a distinctive mark of their belonging to the army, a cross on the head cover for East China Railways. "M.D." (Manchouria Drujina) is fixed on the cross for Saghalien. Besides the distinctive cross, the militia wear on the sleeve a red stripe a half *werschok* wide, red button-holes on the collar, and on the top of their cap a narrow red band.

Concerning the organisation of the volunteer company above mentioned, an American paper of August 6th, 1904, contained the following criticism:

"The strange rumour that the Russian Government was going to organise a volunteer company of Saghalien exiles seems to have been confirmed by recent declaration.

"The Russian exiles, mostly engaged in collieries, are unparalleled in their ferocity, and may be regarded as beasts rather than men. Of these exiles the promised volunteer company was to be organised not by voluntary enlistment, but by compulsory conscription, offering by way of reward the shortening of the term of punishment, by reckoning every two months in the army as one year of punishment.

"Such a contrivance could not be accepted as alleviating in any way the grimness of war."

Though somewhat harsh, the above well suggests what truth and law dictate.

CHAPTER II.

PRISONERS OF WAR.

Sect. I. Treatment of Prisoners.[1]

During the Russo-Japanese War there were 85,544 Russians, including men in medical service and their families, who were captured by the Japanese army and navy. Examining these, the Japanese Government selected 79,367 from them and treated them as legitimate prisoners. Of course there were many prisoners who were released or died at the front. Only 72,408 Russians were sent across to Japan and interned in prison barracks in various provinces. On September 5, 1905, peace was restored between Japan and Russia by the conclusion of the Portsmouth Convention, Art. XIII., which provided that "both governments shall deliver all their prisoners, and that as soon as possible in case the Convention came into force a special committee would be appointed by each government for that purpose, so that each government can easily deliver its prisoners to them or to some representative commissioned by them." There were 1777 Japanese prisoners who were received by the Japanese Imperial special committee in the western frontier of Russia, besides 223 who were delivered at Manchuria and Nagasaki. Russian prisoners to the number of 71,802, excluding those escaped, released, and deceased, were delivered, by the order of the Japanese Minister of War from Bureau of Information to the Russian special committee or their representatives at Yokohama, Yokkaichi, Kobe, and Nagasaki, beginning from November 12, 1905, and ending on February 19, 1906.

[1] The most part of the material in this chapter has been taken from Dr. Akiyama's report on the Russian prisoners during the Russo-Japanese war.

Russian prisoners of war in Japan were numerous, while Japanese prisoners in Russia were only 2000 in all; and it is with heartfelt pride that Japan can produce several proofs to show that she gave this great number of Russian prisoners the very best treatment in her power, a treatment far better than that given by Russia to the Japanese prisoners in her country. In the summer of 1905 a visit by the author of this work to the barracks of Russian prisoners in Japan, a talk with Admiral Wiren and other high officers as well as the lowest common soldiers, revealed their unreserved opinion relative to the treatment given them, which was a universal satisfaction on this point. It, however, will be convenient to readers to give them a few official reports concerning the treatment of prisoners both in Russia and in Japan so as to enable them to compare the results of the two countries, rather than to give them the results of merely a personal observation.

I. *Personal Investigation by Mr. Smith, U. S. Vice-Consul at Moskow.*

In December, 1904, 65 Japanese prisoners of war, who were detained and accorded the treatment of officers at Medved, sent in a petition to the United States Embassy, in Russia, asking to send a representative from that embassy.

According to what one of the American Embassy learned at the General Staff at Russia, the despatch of a messenger was under the control of the General Staff, and that to get a formal permit, it was necessary to refer the matter through the General Staff to the Minister for Foreign Affairs, who then should get a sanction from his Majesty the Emperor, a visit to prisoners during the war being a thing prohibited by an Imperial ordinance.

The United States Embassy then made a formal communication to the Russian Authorities. As its consequence Mr. Smith, the Vice-Consul at Moskow, was sent out as a messenger for the visit, whose careful and circumspect investigation is embodied in his report. When Mr. Smith arrived at Medved,

the Japanese prisoners handed him the following memorandum:

MEMORANDUM.

(1) We cannot understand why the passengers and crew of the steamer *Haginoura-Maru* and the schooner *Hakutsa-Maru* are kept as prisoners of war, since they took no part whatever in the war. We also think surgeons should be released, according to the Treaty of Geneva. It is stated that the Japanese Government have released all who took no part in the war, except naval and military men.

(2) As to our hospital, we have frequently complained to the Russian authorities, and at present things have been considerably improved, but our request for Japanese attendants or nurses and for free medicine have not yet been fulfilled.

(3) A. Regarding correspondence, we all requested that this be delivered to us as quickly as possible, but sometimes it takes two or three months in delivery. We do not think that this is necessary, for other letters are received in due time.

B. We have forwarded letters written in Japanese and Katakana characters, but they could not pass the Bureau, and so we asked that they be returned to us, and also that the letters which came from Japan be delivered to us.

C. It has often happened that we have not received parcels, although they were mentioned as having been sent in letters we received. After His Excellency the General visited us, a few days after Christmas, we expected these improvements, but the result seems to have been quite the contrary, especially as regards books, magazines, etc.

D. During the last year we were allowed to read both Japanese and English papers, but these have since been prohibited, as well as even Russian papers.

E. There are many mistakes in handling letters and parcels, they being opened and then replaced sometimes under a different address.

(4) Regarding interpreters, we have none here, in spite of our frequent requests. In a great country like Russia we believe there are many who speak English, if not Japanese, and we cannot understand why the Russian Government should be so economical and hesitating; there is at least one interpreter for every forty Russian prisoners in Japan.

(5) The limits of our promenade have been more and more reduced, gradually, ever since we came here, and at present we only have two hours a day under strict control, and it frequently happens that we miss even this chance by some accident or other, the time being so limited.

(6) A. At first we were quite free to do our purchasing in any way we saw fit, but now we are allowed only one hour for that purpose and two persons. This makes it quite inconvenient and almost impossible to do all the purchasing in that short time of about fifty different sorts

of daily provisions—and on Saturdays, Sundays, and the many other holidays we are entirely prohibited from shopping.

B. We have been prohibited from purchasing at some shops, and not even permitted to enter them; hence we suffer great inconvenience and also have to pay higher prices for our goods. And we are not allowed the proper drinks for table use.

(7) There is no chance or means of communicating with Japanese officers, soldiers, or sailors in prison in other garrisons.

The report of Mr. Smith is as follows:

REPORT OF MR. THOMAS SMITH'S VISIT TO THE JAPANESE PRISONERS OF WAR AT MEDVED, NOVGOROD GOVERNMENT, RUSSIA.

February 11, 1905.

On 30th January I visited the village of Medved in the Government of Novgorod, where the Japanese prisoners of war are concentrated. There are 69 officers and 414 privates, amongst the latter 21 Koreans and 5 Chinese.

To assist me in the inspection and interrogation, the following officers had been despatched to Medved by order of the Minister of War:

Lieut.-Col. of the General Staff, Prince Volkonsky;

The late Russian Vice-Consul at Kobe, F. I. Vasilieff, at present attached to the General Staff;

Col. A. U. Stankevich, Commander of the 199th Siberian Infantry Regt., who has charge of the prisoners.

I commenced my inspection with the lower ranks of the prisoners, composed of 4 squads, who are domiciled in platoons in beautiful brick barracks, well lighted, dry and high (about 65 feet), and well ventilated. Every soldier has been furnished by the government with an iron bedstead, straw mattress, pillow, blanket, two towels, pillow cases, sheets, and undergarments. By orders of the General Staff to the District Commissariat, the prisoners of war will be furnished with a new equipment of clothing in the near future.

All the prisoners look healthy and strong and they are in the best of spirits. I tried the food given them and found it very good and tasty. The dinner consisted, on that day, of rice soup, with vegetables, and beef and buckwheat gruel. According to the weekly distribution of food, which I herewith enclose, the menus are made up as follows:

(a) Dinner: Barley soup with vegetables and beef, buckwheat gruel.
Supper: Manna gruel.

(b) Dinner: Vermicelli soup with vegetables and beef, buckwheat gruel.
Supper: Millet gruel.

(c) Dinner: Rice soup with vegetables and beef, buckwheat gruel.
Supper: Manna gruel.

Generally black bread is furnished, but by order of the Minister of War this has been changed to coarse white bread. Each man gets 3 lbs. of bread per day, but as the Japanese do not eat so much bread, they asked to be given only 2½ lbs. per day, and the cost of the remaining ½ lb. to be contributed towards improvement of the cooking. Tea and sugar are furnished twice a day, the Russian soldiers receiving pressed tea in the form of cakes, while the Japanese, who do not like this kind of tea, are getting the ordinary kind. As hot water is furnished all day tea can be prepared at any time of day, as each man wishes.

Upon close inquiry I found that all the common soldiers among the prisoners are satisfied, but would like to have rice soup and macaroni instead of the manna. The Commander told me that under the circumstances he cannot comply with this request, on account of the high price of rice and macaroni. However, the Commander has communicated with the General Staff about this, and in the near future the prisoners will receive macaroni instead of manna.

The prisoners do not have to do any burdensome work, except that they clean the barracks and courtyards surrounding the same, carry water, wood, and fire the stoves, etc. The prisoners have selected certain of their number to do the cooking, and these are assisted by Russian soldiers. If they did not wish this, the Russian soldiers would be recalled.

The prisoners get plenty of exercise in their daily walks, coasting on icy hills, and gymnastic exercises in an excellent riding school, 500 ft. long and 180 ft. wide.

They are engaged in manufacturing various toys, such as ships, animals, birds, etc. Their work is very neat and skilful. The commander wishes them to turn out as much as possible of this work, as 50% of the proceeds goes to the workman and 50% to the fund for improving the food. The privates go twice a month to the regiment bath-house, but they are not satisfied with this, and wish to bathe four times a month. As each time involves a cost of copecks 30, the commander has applied to the authorities for permission.

It must be noted that the Russian soldiers bathe only twice a month.

I also called on Major Togo, who occupies a nice large room, part of which is partitioned off for a bedroom, with an adjoining kitchen. He has a Japanese soldier at his disposal. He is allowed to walk separately from the rest and is not so restricted in the space allotted. He is accompanied by his wife, who, at her own wish, went with Major Togo and is treated like a prisoner of war. Mrs. Togo has asked for permission to have a Russian maidservant. She had a Japanese maid, but the latter left not long ago, and the commander has placed her in charge of the Ministry of Interior. It would be desirable to assist this woman and send her back to Japan.

Major Togo told me that he was satisfied with the treatment he received, but would like to have some books, for instance Schiller's "William Tell," a Russian-Japanese dictionary, Russian newspapers,

and the Japanese *Times*. He receives rbls. 75 per month from the Russian Government.

I then visited the 68 officers. They are living in a large two-story brick house. The rooms are all large, well lighted, dry, and well ventilated. It was left to them to select their roommates. Each officer has an iron bedstead, with a good mattress, one chair, and one small table for two officers. They are not satisfied with this, and wish to have one large table in each room. Large tables may be forwarded later on. There is a closet in each room. To these 68 officers are attached 20 Japanese soldiers. They procure their own provisions, the same being purchased by four people selected for the purpose. Formerly they procured their dinners from the officers' club, but as they did not like the Russian dishes, they were allowed to procure their own provisions. They paid 21 rbls. per month at the officers' club, and the expense is the same under the new arrangement. They are not satisfied, however, to be forced to purchase at certain stores.

The officers receive rbls. 50 per month from the Russian Government, the same as the Russian officers, only that the Russian officers have to pay for their lodging and heating. Officers of the staff receive rbls. 75 per month, the same as the Russian staff officers do. The officers are permitted to go out daily for two hours in a district outlined by the commander, and accompanied by one Russian officer. Lately this district has been reduced on account of some of the officers having gone outside of the limits, principally the Englishmen, and also because the Japanese Government curtailed the liberty of the Russian prisoners of war in Japan.

The dissatisfaction expressed by some of the officers consists in the following:

(1) During the last month they have not been allowed to receive any newspapers and journals. The commander explains that the Japanese Government has acted likewise towards the Russian prisoners of war.

(2) They would like to have certain medicines, but cannot get them at the drug store of the regiment. The commander states that at the drug store only such medicines as are prescribed by law are kept, and that the officers could procure the medicines desired at private drug stores and at their own expense, just as the Russian officers do.

(3) They would like to receive their letters earlier, as now it takes three months to receive a letter. The commander promised to see to this.

(4) They want an interpreter knowing English, Japanese, and Russian attached to them. This request has been sanctioned, but there are difficulties in finding such an interpreter. For the soldiers they wish an interpreter speaking Japanese and Russian.

(5) Formerly the officers (99 in number) were allowed to procure 70 bottles of beer and several bottles of whisky, but now they are only allowed to buy 30 bottles per day. The commander explains that the officers abused the order and incurred debts. Upon my request he

permitted them to procure 40 bottles of beer per day and each officer to have one glass of whisky per day.

(6) They are allowed to go to the bath-house twice a month, but would like to go four times a month. As a matter of fact the officers should not be allowed in the Government bath-house, but the commander was kind enough to sanction it. He permits them to go to the bath oftener, but to a private bath, where they have to pay 20 copecks. All the officers are satisfied with this proposal.

(7) The officers Miyazawa and Tatibana, who were made prisoners on board of the *Sado Maru* and *Haginoura Maru*, declare that they should not have been made prisoners, as they are physicians. All the officers confirm their statement. The Japanese Government does not make Russian doctors prisoners of war, but sets them free immediately. The Russian officers told me that there should be no difficulty in liberating these officers (doctors).

Upon my question as to whether they were not in want of clothing, underwear, and bed linen, they told me that they were not. The Englishmen, however, wished to have some American tobacco, say 4 lbs., and to get books and newspapers regularly.

The Commander of the Regiment, Adam Zurjevich Stankevich, impressed me as a very congenial and good-hearted man, who takes an interest in the prisoners of war. There are a number of large brick barracks at the village of Medved. They all contain large and light rooms and spacious halls, and are all being renovated at present for other Japanese prisoners of war.

In the building that Major Togo lives in, there are several large, good rooms with a kitchen, which are destined for officers, and if it were possible to place some of the officers in these rooms this would not mean less comfort but an improvement, as at present the soldiers and sailors are occupying better lighted and ventilated rooms than the officers. The commander thinks that Your Excellency could easily arrange this, in your own name, with the Minister for Foreign Affairs.

The Englishmen have a room by themselves, four men in a room, and they are comfortably cared for as far as light and air is concerned, as well as food.

(*Annex. Memorandum of Mr. Thomas Smith.*)

I beg to call your attention to the following request that was made of me by the prisoners. It seems that before December they had great freedom of movement and were permitted to go all over the village of Medved, but at present the space that is allotted to the officers for walking is very small, and they have also been deprived of a skating pond. This latter I found to be one of the most important complaints, and if they could have the privilege of skating on the small pond it would be very important for their health.

Respecting newspapers and books, they have been deprived of these for the last three or four weeks. It is very important for them to get

these regularly, as it keeps their minds engaged. They wish to have Russian newspapers as well. I visited the Bureau in St. Petersburg, No. 5 Panteleimonovskaya, where all letters, newspapers, books, and packages are censored, and obtained the promise of the Bureau to forward at once all packages of printed matter and letters that they had on hand. Amongst these was a very large quantity of English newspapers and some magazines. Mr. Vasilieff, late Russian Vice-Consul at Kobe, now attached to the General Staff at the War Department, is the censor at the Bureau, and everything destined for the Japanese prisoners of war, without exception, passes through his hands. In this connection I hope that the commander will carry out his promise of letting the soldiers and officers have four baths instead of two a month.

I asked the commander whether, if he had a small fund in hand, he would agree to use it, when it was necessary, to improve the condition of the soldiers' food and pay for medicines that the officers should require which are not in the hospital list, and which I found would be a very small amount per month. Of course, with the officers neither of these things were absolutely necessary, because they buy their own food. With them it would only be the high-class medicine.

The soldiers did not ask me for this, and it is merely my suggestion, so that these trifling matters might not give rise to any complaints.

The hospital is in a very good condition and the prisoners of war are treated exactly as the Russians are. The hospital in Medved is of the ambulatory type, and when there is any serious indisposition of the officers they are sent to Novgorod.

If it is desired to send the prisoners of war any tobacco, tea, coffee, or anything whatever, I have spoken about the matter at the Bureau to-day, and it was suggested that you send everything to the Bureau here, addressed to the parties the articles are intended for. The Bureau have promised to forward them the same day free of charge. They say this will simplify matters, and that if you send articles direct to the commander in charge of the prisoners he might get into trouble, while by sending through the Bureau the things are perfectly safe and reach their destination quicker.

Respecting the money that you would like to deposit with the commander in charge of the prisoners of war, this can be done by addressing the commander.

At the Bureau we discussed the sale of the articles made by the prisoners, and the opinion was that it would be difficult to dispose of them here in the city, because nobody cares to undertake it, although orders are being received from society people for different articles.

I mention this because it would greatly improve the condition of the prisoners and give them a chance to make money if their articles could be disposed of.

This, of course, refers only to the privates.

I was told, when at Medved, that the Minister of War had arranged with the commissary to send all the prisoners of war special linen clothing and sheep-skin coats and boots, but up to the present time

these things have not arrived at Medved, although Prince Volkonsky, the Adjutant who was sent from the General Staff at St. Petersburg, said that the Commissioner had already made all the arrangements and that they will arrive in a few days at Medved. I mention this in case you should have an opportunity of speaking about it. The clothing and linen they have now are in very good condition—it is the clothing they arrived in.

More rooms are being prepared in the barracks at Medved for prisoners of war that are to arrive, and new apartments are being prepared for officers also. Medved seems to be the principal place in Russia for this purpose, as there are so many barracks there suitable for keeping prisoners.

The Japanese prisoners want to know why they were not kept in a warmer climate, such as the south of Russia, for they say the Russian prisoners of war are kept in a warm climate in Japan.

These are details of the report made by Mr. Smith who had twice visited the prison barracks at Medved during the war.

After the war the author met several Japanese who had been prisoners at Medved; they still insisted that the treatment of the Russian authorities was not all in accordance with what they promised Mr. Smith. Mr. George Anderson, the Captain of the *Sado Maru*, and Mr. William Kerr, the Chief Engineer of the same vessel, said that the treatment of prisoners by the Russian authorities was not very bad, still it is true that the proper authorities were not prompt in carrying out their promises.

Compare in the following the difference in treatment of Russian prisoners by the Japanese authorities:

II. *Treatment of the Russian Prisoners in Japan.*

I. According to verbal information of a member of the United States Embassy at St. Petersburg obtained at the Military Staff Office of Russia, in December last, all visits to prisoners of war are prohibited in Russia by an Imperial Edict, and therefore, for giving permission to visit Japanese prisoners of war, the Military Staff Office has to apply to the Emperor himself, through the Minister of War. Such being the case, a French priest recently applied for permission to see those prisoners, but met with a flat refusal. Whereas, in Japan, there being provisions in Art. IX. of the Regulations for the Treatment of Prisoners to the effect that no person shall visit prisoners' quarters unless per-

mitted by the Commander of the Garrison, and that to a foreigner who desires to visit prisoners' quarters the Minister of War will grant the necessary permission, it is made a rule to permit all persons who may desire to see the Russian prisoners, be they Japanese or foreigners, to gain access to them. Not only the members of the foreign legations and consulates in Japan, but other foreigners who have applied for permission to pay a visit to prisoners' quarters have never been refused. It may be observed in this connection that M. de Fossarieu, the French Consul, has been making such visits, once or twice every month, attended by his servants and others. The commander of the garrison in the places where prisoners' quarters are established, has also accorded free access to the prisoners to the representatives of the various local bodies, as well as to individuals. As to religious services, the Japanese authorities pay the greatest possible attention, many priests, who are pupils of Bishop Nicolai, being granted free access to the prisoners; and for the benefit of the Roman Catholic prisoners, l'Abbe Perrin, a French priest, is accorded the liberty of freely performing the various rites and services.

II. In Russia, Japanese officers and others in captivity are not allowed to purchase medicines, while the medicines kept in store at the medical laboratory of the garrisons having custody of the prisoners are very limited in kind and quantity. But in Japan, to give an instance, the sick and wounded among the Russian prisoners at Matsuyama, irrespective of their being officers or not, are taken into the Military Hospital there, towards the equipment of which the authorities concerned are doing their best, and in which Military Surgeon-General Dr. Kikuchi, skilled in the medical art, and many other military surgeons, as well as surgeons and nurses of the Red Cross are busily engaged in the treatment of the prisoners. In that hospital, and in the medical establishments attached to prisoners' quarters in other places, as well as the reserve military hospitals where Russian prisoners are received for treatment, all necessary medicines are given them in sufficient quantities, so that they do not stand in any need of purchasing medicines from private dispensaries. In the case of captive officers, who are allowed to live in private houses on parole, they are received, when they become ill, into medical establishments attached to prisoners' quarters or reserve military hospitals, and are supplied with all medicines and other things necessary for their cure.

III. The Japanese prisoners in Russia are, it is said, allowed to bathe only twice in a month. In Japan, on the contrary, the greatest care is taken of the health of the Russian prisoners, and a paper, giving full particulars relative to the preservation of health, is given to each of them. In each place where they are quartered they are allowed to bathe at least once a week, at no cost to themselves.

IV. The Japanese prisoners in Russia are quartered in a cold place like Medved, and recently the space allowed them for free walk has been considerably diminished. Even the officers are allowed only two hours' walking per day, and that in a very limited place, under strict

surveillance. Moreover, the prisoners are prohibited from enjoying the pastime of skating on the ice, which sport would be very healthful for them.

In Japan the number of Russian prisoners has been constantly on the increase since the first batch of them, taken in the battle of Kiulien-cheng on the 1st May last, was brought home. But they were all, including those taken at the fall of Port Arthur, quartered in Matsuyama, Marugame, Himeji, Fukuchiyama, Nagoya, Shizuoka, etc., all of which places boast of the best climatic conditions in Japan; and it was only when the numerous prisoners taken in the battle near Mukden arrived that the authorities were compelled to establish a number of prisoners' quarters in the neighbourhood of Tokyo and in places farther north.

The prisoners lodged in Matsuyama, Marugame, etc., are allowed to take turns in the streets and to visit the hot springs in the neighbourhood.

The time allowed them for promenading has never been limited to a small number of hours.

In July last a Cossack lieutenant and six others quartered at Matsuyama attempted to escape as many as four times. In August and September, too, six prisoners at Matsuyama and Marugame made three such attempts. Again, on the 5th of January last, six prisoners, including officers, conspired to effect their flight at Matsuyama. Such attempts on the part of the prisoners have prevented the authorities for a long time from according the captive officers in general greater freedom in walking. But because such offences have since become less and less frequent, the Imperial Government established, on the 18th of March last, the Regulations for the Prisoners' Free Walking, and Residence in Private Houses. By these regulations such officers and officials of corresponding rank as may desire under special circumstances to live with their wives and children were given permission to take private houses and to lead a free life as regards walking and in other respects. At the same time, the officers and officials of corresponding rank quartered in the establishments prepared by the Government for them were granted, on their taking oath, the liberty of taking walks abroad during the daytime.

V. The Japanese prisoners at Medved, 69 officers and 414 non-combatants, are allowed to purchase only 40 bottles of beer for all and a glassful of whisky for each officer per day. The officers have to pay high prices for their daily necessaries, as they are permitted to make purchases only at certain stores. Moreover, no more than two persons are allowed to make daily purchases, and that within the short space of an hour. Hence, a serious inconvenience is felt by the prisoners in making their purchases.

In Japan a canteen is attached to all the prisoners' quarters, where the prisoners can buy anything they want, for reasonable prices, at any hour during daytime. Those canteens are not allowed to charge more than the ordinary market prices and are under strict inspection

of the military authorities. At Shizuoka, Nagoya, Matsuyama, and other places where officers are quartered, various kinds of alcoholic beverages are for sale, so that the officers in those places can freely buy their table drinks. They are also allowed, while walking in the streets, to enter into any shop and buy almost anything through the assistance of their interpreters. Thus, not only the officers, but the non-commissioned officers and men are free to purchase their daily necessaries, and in doing so they have to pay only reasonable prices. As the matter stands, not a few officers have bought such curios as Yoroi (armour) and Katana (swords), which they intrusted to the custody of the authorities, stating that they would take them home upon their release.

VI. The Russian authorities sometimes take two or three months in delivering to Japanese prisoners the letters addressed to them. Parcels, as regards the forwarding of which intimation is made in the letters, not infrequently fail to reach their destinations, especially in the case of books and magazines. Moreover, parcels and letters are often delivered to the wrong persons through errors made on the part of the Russian authorities in opening and resealing them. Nor are the prisoners at Medved allowed to have any communication with their brother-prisoners in other places in Russia.

In Japan the Russian prisoners in the different places are permitted to communicate with one another, no restriction being put on their exchange of either telegrams or letters. Their letters, which they are left free to write either in Russian or in English, French, German, Polish, or other languages, are examined by a large staff of censors, and speedily forwarded. The letters addressed to the prisoners are examined in the same way, only such letters as are quite illegible being sent to the Prisoners' Intelligence Bureau for examination. Even in the latter case not many days have ever been wasted in their transmission. It was after June that the number of Russian prisoners in Japan increased suddenly, and yet the letters and parcels they forwarded during ten months, ending the 31st March last, amounted to 51,437 letters and 416 parcels, while those received during the same period amounted to 20,949 letters and 991 parcels. All such letters and parcels are examined by the Japanese authorities with a great deal of care, so that they have never failed, as in Russia, to reach the persons to whom they are addressed. In strict accordance with The Hague Convention, this postal matter is exempted from postal charges, and all articles sent for the relief of the prisoners are made free from customs and all other dues, as well as from freight on all the government railways. Moreover, the general public entertains such warm sympathy towards these prisoners that the private railway companies, such as the Sanyo, Iyo, Sanuki, Hankaku, Kyushiu, and Nippon, whose lines extend to localities where the various prisoners' quarters are established, are also carrying free all articles addressed to prisoners.

VII. The Japanese prisoners in Russia, it is said, are denied all books and newspapers. But in Japan the Russian prisoners have never

once since the outbreak of war been prohibited from reading books, newspapers, or magazines. They are at liberty to purchase Japanese and Russian books, or any kind of foreign books. Books and magazines that are given to them as presents are at once delivered to them. Moreover, they are allowed to take not only Japanese newspapers and magazines, but those of Europe and America. A limit, however, has been made as to what newspapers can be purchased by the prisoners, because, and only because, the authorities find it impossible to examine all these worldwide publications, their time being so much taken up with the inspection of letters to and from the Russians. But this limitation does not apply to the newspapers printed in the Japanese vernacular. The following are the English and other papers on the unprohibited list:

English papers published in Japan—

1. The *Japan Mail.*
2. The *Japan Times.*
3. The *Daily Advertiser.*
4. The *Japan Gazette.*

English papers—

1. The *London Times.*
2. The *Standard.*
3. The *Daily Telegraph.*

French papers—

1. Le *Temps.*
2. Le *Radical.*
3. La *Lanterne.*

American papers—

1. The *Sun.*
2. The *Tribune.*
3. The *Washington Post.*

German and Austrian papers—

1. *Norddeutsche Allgemeine Zeitung.*
2. *Berliner Lokal-Anzeiger.*
3. *Neue Freie Presse.*

In addition to this, all foreign newspapers, even Russian, which are sent to the prisoners from abroad are delivered to their addressees. What is said above respecting newspapers holds good in the case of Japanese and foreign magazines. Between July and March, 1905, the prisoners forwarded printed matter 416 times, and in the same period received it 2171 times.

VIII. The Japanese prisoners at Medved are said to have asked in vain to have interpreters supplied them. On the contrary, the Japanese authorities did their best to have interpreters connected with

Russian prisoners, even at the front. At home, Russian interpreters are posted at the various prisoners' quarters, their total number amounting at present to no less than 181. At Nagoya the authorities have appointed a French interpreter, since among the Russian officers in that city there are some who speak French. Besides, the official staff of the prisoners' quarters are selected from among military officers who can speak either English, French, or German, so that neither Russian officers nor men in these establishments can possibly feel any inconvenience in this respect.

Sect. II. Parole for Free Outdoor Exercise.

In order to enable the captured Russian officers to enjoy the pleasure of free outdoor exercise, the Japanese Government drew up a rule in the Russian language and gave it to them. But there was much complaint among them about the word "Presharg," meaning oath, that was used in the rule. The reason of their complaint was that the word "Presharg" meant taking an oath before God; and there were only three occasions in their life time when they were allowed to take an oath, namely, before a judge in a law court, at the time of being enlisted as a soldier, and at the time of the present Emperor's coronation. They were not authorised to take an oath before God on ordinary occasions; and they would not do it, as, otherwise, they should be religiously punished with excommunication. They further suggested that "Presharg" was not the only word meaning oath, but that there were other words with a similar meaning, which would be used in ordinary cases. The director of the prison barracks at Matsuyama, who found some reason in the complaint, sent an application to the War Department to get the wording corrected; and the department, accepting his application, altered the wording to "Obyazkosina-chehstnæ-slowo," which has a similar meaning of an oath. But there was another trouble. Although the wording of the oath was corrected to their satisfaction, yet they offered another complaint against the sentence, "Prisoners shall not contemplate escape," used in the wording of the parole. They insisted that it was natural for prisoners to wish to escape. To stop it by a rule was to restrict their

will. If the establishment of such a rule was for the purpose of facilitating their superintendence, a simple limitation of time for their going out would answer the same purpose, and there would not be any necessity whatever to resort to the restriction of their free will; hence their unwillingness to accept the rule of parole. Japan decided not to give ear to any further protest, but to carry out the rule in the present form, it having been the belief that the objection was nothing but an example of the habit common among the Russians of catching at any little advantage by offering strained reasons on every important or trivial occasion, and that it had already been an act of deep grace towards them to alter the wording of parole. On the 20th of April, 1905, over 300 officer prisoners were assembled in the lecture hall of the Matsuyama Middle School, and the director of the prison barracks delivered a speech to them, explaining the rule of free outdoor exercise as well as the liberality of the Japanese Government, and told them to take an oath according to the rule if they wanted to enjoy this privilege. At this time about one-third of the whole number of Russian officers signed the oath, and gradually others followed their example until about two-thirds of the whole number had signed. Many, however, refused to take the oath to the very last, among them being Captain Salnavski.

TABLE SHOWING THE NUMBER OF RUSSIAN PRISONERS LIVING IN PRIVATE HOUSES.

Place of Prison Barrack.	Army.					Navy.		Total of both Army and Navy.
	Rank.				Total.	Rank.	Total.	
	Generals.	Colonels.	Lieutenants.	Warrant Officers.		Lieutenants.		
Shizuoka.....	..	1	..	..	1	..	..	1
Nagoya.....	..	1	1	..	2	..	..	2
Fushimi.....	1	..	10	2	13	..	..	13
Hirosaki.....	..	3	1	1	5	..	..	5
Matsuyama...	1	3	12	1	17	1	1	18
Total.....	2	8	24	4	38	1	1	39

As soon as officer prisoners were permitted to take free outdoor exercise, in April of 1905, the Commander of the Garrison at Matsuyama decided to permit those who had brought their families with them, or who had special reasons for wanting the privilege, to live in private houses within the limits of the city of Matsuyama.

From the beginning, it was by Japan's arrangements that those officer prisoners who, on account of their special circumstances, wanted to live in private houses could apply for the permit to the Minister of War; but at the start, when the number of officer prisoners was very small, there were none in circumstances to enable them to apply for this privilege, and no such applications were sent in. But when their number increased, especially after the arrival of a large number from Port Arthur, there came to be so many applicants for this privilege by virtue of their respective circumstances of various kinds that it was impossible to grant all their applications without hazarding the maintenance of order. Consequently it was decided to grant a few applications, selecting those who had the most important reasons for asking the privilege.

Of those who enjoyed this privilege of living in private houses, Captain Gemmerman and Lieutenant Grinski, both married men, were prisoners. Then came in succession war-correspondent Tageff; Major General Ganenfeld, captured in the battle of Mukden; Colonel Prince Gedroitz; Lieutenant Colonel Gringerberg, once very famous as an honorary regimental commander; Captain Tarnovski, who had once behaved like a madman through an intense love of his wife, and several others; the number of such homes at one time reaching sixteen.

The manner of life of those who had this privilege was quite different from that of their fellow-officers in the prison barracks. They each formed a comfortable home, some with their wives, and some with their relatives or old friends, and all seemed to be forgetting the misery of their unfortunate situation. As it will be interesting to know the way they lived, a

description of a few examples of their life in private houses may be given.

1. *Captain Ivanoff.*

The surrender of Port Arthur brought to Matsuyama transport after transport full of Russian prisoners. Among these there were over 470 officers; and of these officer prisoners, there were not a few whose condition called forth Japan's deep sympathy in connection with their brothers or children who were with them as fellow-prisoners. But the case which received most sympathy was that of Second Captain Ivanoff. It was on the 18th of January, when a drizzling rain was falling and a chilly wind blowing, that a transport from Ujina dropped anchor alongside the pier of Takahama, having aboard prisoners from Port Arthur. Although the majority of the officers had a well-cared-for appearance, the common soldiers seemed mostly much neglected. It was on this occasion that Second Captain Ivanoff, came to the place of his detention with a sad and melancholy countenance, leading by the hand a little girl of seven or eight years of age. She was a lovely girl, but her pale and timid face seemed to tell a story of long trial and adversity deeply impressed in her little heart during the siege of Port Arthur. When the Captain was taken into the barrack of Ichiban Street, his charge was intrusted to Mr. Bryan, an American missionary, whose family was apt to give comfort to the lonely and miserable girl, he having five or six children in his home. Here she stayed a few months. Gradually recovering from the fatigue of the siege, she grew cheerful and happy as soon as the privilege of living in a private house was granted; shortly the Captain took charge of his daughter, and lived jointly in a house with Tageff for a short time until he hired another house for himself at Samban Street. It was stated that his wife had died six years before in Siberia, but that he had not taken a second wife through the love of his daughter. Genya, which was the girl's name, lived with her father in Port Arthur, and more than once during the siege she suffered slight wounds by exploded shells which fell into her house. It was

therefore natural that the dreadful scenes of Port Arthur were so deeply impressed on her that for a long time after her arrival at Matsuyama she was frequently found in her sleep with a look of horror on her face, probably seeing in her dreams the fearful scenes of her old abode; and often, even in the day, she would seem to forget herself and would start as if with sudden fright. The poor father received the more sympathy when we learned that he had lost two sisters of the little Genya while in Manchuria.

The house in which the unfortunate father and his daughter lived was a small building with three or four rooms and a little garden. The front windows faced the street, which was, however, very quiet, and did not disturb the quiet of the house. Here the Captain peacefully and comfortably lived with his beloved daughter, employing a Japanese maid-servant as cook, who had a slight knowledge of the Russian language.

It was in August, when the heat of summer was intense, that a Japanese officer of the prison barracks called on the Captain. The Captain instantly came out and showed the officer into a room, and only a few words had been exchanged when the lovely little girl came into the room with a sweet smile and offered a fan to the visitor. Then the Captain rose to bring tea, but the officer declined it, and was about to leave, when the girl again came in with a dish of pineapple and a fork, and asked the visitor to help himself to a piece. This was not done by order of the father, but she herself wanted to entertain the visitor, and had sliced the fruit neatly and brought it in. She was still very young, and was of an age when children often do nothing but tease their mothers for sweets. But she had lost her mother, and was brought up by her father, whom she was able to help in his household affairs with the tender hand of a little child. The Captain was in the unfortunate position of a prisoner, but he was able to live peacefully with his dearly beloved daughter under the cordial protection of the Japanese authorities, which must have been a happy feature in his sad circumstances.

2. *Home of Grinski and Gemmerman.*

Lieutenant Grinski also came from Port Arthur. His wife, who had at first stayed at Nagasaki with her little child, came to Matsuyama in company with the wives of some other officers. When the privilege of living in private houses was granted, the Lieutenant hired a comparatively spacious house at Niban Street, at first jointly with Captain Gemmerman, but later occupied the house himself with his family and a Japanese maid-servant, the Captain having got another place for himself. The house appeared to be very comfortable. It consisted of two buildings with a garden between them; and the rooms with Japanese mats and fittings were used in the original form with an addition of tables, chairs, paintings, and photographs in the alcove. When he went out for a walk or on business he used to take his wife with him, but generally left his child with the servant in the house.

Captain Gemmerman lived at Kaya Street with his wife and youthful daughter. The gate faced the street, but the house was situated far towards the rear of the garden. It was a new building and had six or seven rooms. The garden was not large, but had an artificial hillock and a pond in it, and beyond the garden there was an outhouse on each side, one being used for the Captain's private room and the other for his official servant. In summer this private outhouse was lined with white gauze on all sides to prevent mosquitoes from coming in, and was used as a general living room. In the drawing room there was besides the usual tables and chairs, a red banner hung on the lintel with Chinese characters embroidered on it in gold, setting forth that it was a present given him by the Chinese people under his administration in appreciation of his virtue. In short, Captain Gemmerman appeared to be the happiest of all the officer prisoners who lived with their families.

Indeed, they were all treated by Japan more like welcome guests invited from a distant country than like prisoners, captured in war.

Sect. III. Prison Barracks.

In selecting places of detention for prisoners of war, Japan paid special attention to the following points:

1. The healthfulness of the place and its adaptability to the comfort of the prisoners.

2. The feeling of the people of the place towards the prisoners.

3. The facility which the place afforded for superintending the prisoners.

Matsuyama, for instance, was situated within one hour's travel from the seacoast of Takahama and only half an hour's distance from the hot spring of Dogo. The climate was mild and the scenery was of the finest in Japan, so that it was noted as a pleasure resort, attracting health seekers at all times of the year. The town also had a history of having received Korean prisoners of war five hundred years ago. The inhabitants were sprightly in nature and had no hostile feelings toward foreigners. Besides, there was an army division in the town, so that it would be comparatively easy to superintend the prisoners. These were the reasons that Matsuyama was first selected as a suitable place for the purpose. Kyoto, Himeji, and Hamadera in the neighbourhood of Osaka, which were also adapted for keeping Russian prisoners, were all excellent places, noted in Japan and well known to Europeans, so that it is not necessary to describe them here. Turning to the side of Russia, things were quite different, and the Russian Government cannot escape reproach for their carelessness when the Japanese prisoners were detained at Medved, which was situated in the same latitude as that of Chishima (Kurile Islands), and which was a place opened by reclaiming swamps and marshes still full of dampness and a noxious atmosphere.

In receiving Russian prisoners into barracks care was taken to make a distinction according to race and religion. Thus, those belonging to the Roman Catholic sect were separated from those of the Greek sect or of the Jewish sect, and the latter

two from each other. The pure Russians were also separated from the people of Polish origin. The following table, made on the 31st Oct., 1905, shows the particulars of the separation, and also shows the places where prisoner barracks were established as well as the number of prisoners kept in those places, namely:

Prison Barracks.	European Russians.	Polanders.	Jews.	Finlanders.	Tartars.	Others.	Total.
Narashino	13,271	1,232	214	0	236	0	14,953
Takasaki	314	138	48	0	5	26	531
Sendai	1,852	186	55	0	0	72	2,165
Shizuoka	300	14	1	0	0	4	319
Toyohashi	871	4	1	0	0	0	876
Nagoya	3,349	195	43	12	147	47	3,793
Osaka	222	1	0	0	0	4	227
Hamadera	19,364	1,587	589	0	0	833	22,373
Otsu	597	35	49	0	67	2	750
Fushimi	1,070	102	56	0	56	428	1,712
Yamaguchi	279	58	4	3	12	3	359
Kumamato	5,395	231	80	1	66	230	6,003
Kurume	2,363	262	74	0	0	0	2,699
Hirosaki	52	4	0	1	0	4	61
Akita	74	10	0	0	2	1	87
Yamagata	39	2	0	0	0	1	42
Kanazawa	2,527	499	87	0	145	60	3,318
Tsuruga	390	68	11	10	10	8	487
Sabaye	35	2	1	0	1	1	40
Himeji	1,804	152	93	1	62	73	2,185
Fukuchiyama	181	123	41	2	1	43	391
Matsuyama	1,890	155	74	3	15	35	2,172
Marugame	334	0	0	0	8	8	350
Zentsuji	687	162	103	0	19	26	997
Kokura	953	35	6	0	10	23	1,027
Fukuoka	3,262	465	109	1	67	143	4,047
Total	61,475	5,722	1,739	24	929	2,075	71,964

Sect. IV. Bureau of Information for Prisoners.

Art. XIV. of The Hague Convention says:[1]

There shall be established at the outbreak of hostilities, in each of the belligerent states, and, if there be occasion, in neutral states which shall have received belligerents within their territories, a Bureau of Information in respect to prisoners of war. This Bureau, which is charged with replying to all applications concerning prisoners, shall receive from

[1] See also Art. XVI. of the Convention of The Second Hague Conference.

the several branches of the service having jurisdiction of the same all the data necessary to establish the individual record of each prisoner of war. It is to be kept informed as to internments and changes, as well as to deaths and admissions to hospitals.

The Bureau of Information is also to receive, centralise, and transmit to the properly interested parties all articles of personal property, valuables, letters, etc., which shall have been found on the field of battle or left by deceased prisoners in ambulances and hospitals.

In explaining the Article, M. Rolin remarks:

M. Beernaert a rappelé que l'initiative de ces propositions déjà anciennes est surtout due à M. Romberg-Nisard, qui, après s'être dévoué aux victimes de la guerre en 1870, n'a cessé de se préoccuper d'améliorer pour l'avenir le sort des combattants blessés ou prisoniers.

Ils'agit en premier lieu, dans dispositions additionnelles, de rendre générale l'organisation de *bureaux de renseignements* sur les prisoniers, analogues à celui qui fut institué en Prusse dès l'année 1866 et qui rendit de si grands services durant la guerre de 1870–71. C'est l'objet du premier de ces articles (Art. XIV).

As may be seen in this remark, a Bureau of Information existed prior to the time of The Hague Convention, such as the body of volunteer nurses formed in Prussia during the Austro-Prussian War of 1866, the purpose of which was to report the conditions of the sick and wounded to their respective families at home; or the Bureau of Information established at Berlin during the war of 1870, where an individual record was first devised, by means of which various reports about the sick and wounded were collected and sent out. But *it was not until the late Russo-Japanese War that a Bureau of Information in its complete form was established as a state institution according to The Hague Convention.* The Bureau of Information established at Berlin in 1870 was a mere private body of Prussian volunteer nurses, and its functions went no farther than to simply report to their families the condition of the *sick and wounded.* In 1893 France issued regulations for the treatment of prisoners of war, in which it was prescribed as the duty of a belligerent to establish a Bureau of Information as a state institution for giving reports on prisoners in general *without distinction of*

their being sick or wounded or not. But France has not entered into war with any other civilised country since that year, and has had no opportunity of putting the regulations into practice. Of the latest wars, the one of 1898 between the United States and Spain was prior to The Hague Convention, and in the South African war of 1901 England would not hold herself responsible to establish a Bureau of Information, the South African Republic not having been a signatory Power of the Conference at The Hague. It may be stated in this connection that Japan deserves high praise from the world for her strenuous exertions not only in enacting elaborate laws concerning a Bureau of Information, but in putting them into operation in regard to more than 70,000 Russian prisoners, as well as the sending back of private articles left on the field by the Russians killed in battle.

The following explains how a Bureau of Information came into existence in Japan.

As soon as the war broke out between Japan and Russia in February of 1904, the Japanese War Department started to make preparation for establishing a Bureau of Information, and appointed Dr. Akiyama, one of the well-known specialists in International Law, a Councillor of the Department, to make a special investigation in regard to the institution. On the 12th of the same month General Terauchi, Minister of War, sent the following note to Baron Komura, Minister of Foreign Affairs, namely:

"Enclosed please find a draft of Regulations for a Bureau of Information, which I have had drawn up, concerning the rules and usages of war on land. If you find no objection in it, I want to present it to the Cabinet under joint signatures with you."

Thus, the Regulations concerning a Bureau of Information were produced before the Cabinet Council under the initiative taken by both the Foreign Minister and the Minister of War.

A few days later the French Minister sent a note requesting the establishment of a Bureau of Information to make

clear the names and official rank of the Russian prisoners and of those who were dead.

To this the Japanese Minister of War answered that Japan was quite willing to establish a Bureau of Information, and that when it should be opened, the request of the Russians would be complied with according to the following conditions:

Conditions for Reporting.

1. The name, age, nationality, social as well as official rank, and corps name of every prisoner, alive or dead, shall be reported in a batch every ten days.

2. As the Japanese Government will give the above report, the Russian Government should give the United States Embassy or Consulate in Russia a similar report about our prisoners. Letters despatched or received by prisoners of war, shall enjoy the privilege of being exempted from postal charges and that articles intended as gifts or relief for prisoners of war shall be free from all duties and from any charges on Government railways.

ESTABLISHMENT AND OPENING FOR BUSINESS OF THE BUREAU OF INFORMATION.

The Bureau was organised by Imperial Ordinance No. 44, dated February 27, 1904, and on the 26th of the same month Major-general S. Ishimoto was appointed President, with a staff of officials. The Bureau began its duties at the war Office on the 29th of that month.

RECEIPT OF INFORMATION.

Immediately upon the establishment of the Bureau the President placed himself in communication with the commanding officers of the several armies in the field, the Commander-in-chief of the fleet, the Commanders-in-chief of all naval stations, and the President of the Red Cross Society, asking for information relative to any prisoners of war who might be taken, as well as to any of the enemy who might be killed.

With regard to officers it is specially arranged that the Bureau shall receive details by telegraph direct from the field as far as circumstances may permit.

The Bureau is maintaining close touch with the prison barracks.

Thus the Bureau is in a position to procure promptly, by every available means, authentic and precise information about prisoners.

DISSEMINATION OF INFORMATION SO OBTAINED.

Hitherto there have been inquiries, in a few cases, relative to prisoners of war, or concerning those whom it was thought might have fallen in battle; these inquiries have been received from persons of various nationalities, and in every instance the Bureau has rendered all the assistance in its power, often causing special investigation to be made before giving a reply.

On August 15, 1904, the Bureau of Information in St. Petersburg sent a telegram to the Bureau of Information in Tokyo, asking to have direct communication between them for the sake of expediting the business relative to prisoners. To this the Japanese authorities consented.

Thus the means of reporting the condition of prisoners became much more convenient, and reports such as the example mentioned below were regularly interchanged to the mutual satisfaction of both nations. The readers are, however, requested to take note that the number of Japanese prisoners in Russia, having been comparatively small, it was rather an easy task for Russia to give the reports; while Japan, which had more than 70,000 Russian prisoners on her hands, experienced no small amount of difficulty in making out reports even so simple as the example here given, namely:

Bureau Central de Renseignements des Prisonniers de Guerre.
28 Janvier, 1905.
No. 145.
St. Petersburg, Pantileimonskaya.

Le Bureau Central Russe de renseignements des prisonniers de guerre à l'honneur de vous informer, que deux soldats Japonais du 48 regiment d'infanterie de reserve: Saruwatari Genko et Matoshima ont été faits prisonniers le 31 decembre, 1904.

MARTENS.

Sect. V. Restoration of Personal Property Left by Russian Soldiers.

In accordance with Art. XIX. of The Hague Convention, the Japanese Bureau of Information did its best to return to the properly interested parties all articles of personal property,

valuables, etc., which were found on the field of battle or left by deceased prisoners. There were innumerable examples of this, but one only will be shown here.

On the 20th of May, 1904, the Japanese Foreign Minister sent a note concerning Lieutenant Demidowitch who was killed on the battle-field, and the articles left by him, as the following list shows:

List of Articles Left by Lieutenant Demidowitch, Killed on the Field of Battle.

1 Officer's Purse, containing:
6 5-ruble Russian paper money,
3 3-ruble " " "
11 1-ruble " " "
3 Photographs,
1 Photograph Album,
1 Officer's Note-book.

To this letter the French Minister replied as follows:

Légation de la République Française au Japon.

Tōkyō, le 20 Mai, 1904.

MONSIEUR LE BARON:

J'ai l'honneur d'accuser réception à Votre Excellence de sa lettre du 20 courant transmissive, de la part du Bureau des Prisonniers d'un airs de décès du Lieutenant d'infanterie Russe Vladimir Adamowitch Demidowitch tué le 12 avril, 1904, and environs de Wiju, ainsi que des objets trouvés sur cet officier.

Je remercie Votre Excellence de cette communication et la prie de vouloir bien agréer les assurances de ma très haute considération.

J. HARMAND.

Son Excellence le Baron Kōmura,
Ministre des Affaires Étrangères.

It, however, involved too much trouble to transmit these articles through the French Ministry, the occurrence not being limited to a few cases, but happening thousands of times.

The French Minister therefore made the following proposal.

On May 30, 1904, the French Minister suggested to the Japanese Government that some change in the management should be introduced.

To this proposal General Terauchi, Minister of War, consented, and adopted the following rules:

1. The clothes, caps, sacred images, cross, and other things of low value that belonged to deceased prisoners of war, shall be buried together with the dead bodies.

2. The cloaks and other articles supplied by the Russian Government shall be taken charge of by the Prisoner Barracks and be used for other prisoners, except those extremely soiled, which shall be thrown away.

3. The private property, such as clothes, shall be sold to the fellow-prisoners of the deceased; and the proceeds, attached with the list of the articles sold, together with gold and silver wares, coins, documents, medals, keepsakes, charitable gifts, etc., shall be sent to the French Legation through the Bureau of Information.

The table on next page shows the number and kind of articles left by deceased prisoners.

Place	Those Left on Fields.			Effects Belonging to Deceased Russian Prisoners in Japan.						Grand Total.
Consignee	Sent to the French Minister by the Bureau of Information.			Sent to the French Minister by the Bureau of Information.			Sent to French Consuls in Japan from Prison Barracks.			
Rank	Officers.	Soldiers.	Total.	Officers.	Soldiers.	Total.	Officers.	Soldiers.	Total.	
No. of Deceased Prisoners	15	73	88	12	237	249	.....	57	57	394
Kind of Article.										
Wills	.....	3	3	.....	11	11	.....	1	1	15
Japanese Coins	.....	0,400 yen	0,400 yen	.....	1,197,049 yen	1,197,049 yen	.....	59,851 yen	59,851 yen	1,257,300 yen
English Coins	.....	£18 00	£18 00	.....	£4 00	£4 00	.....	10*s.*	10*s.*	£22 10*s.*
American Coins	.....	.....	.....	.....	.....	.....	.....	.25	.25	.25
Russian Coins	1,012.05 rubles	62.68 r.	1,074.73 r.	75.00 r.	791.07 r.	866.07 r.	.....	309.09 r.	309.09 r.	2,249.89 r.
French Coins	.....	55c.	55c.	5f.	20c.	5f. 20c.	.....	10c.	10c.	5f. 85c.
Chinese Coins	1.2 T.	.....	1.2 T.	0.11	0.771	0.881	.....	.....	.....	2.081
Ikons	6	1	7	6	8	14	.....	1	1	22
Watches	4	2	6	5	3	8	.....	3	3	17
Rings	4	.....	4	7	3	10	.....	.....	.....	14
Clothes	45	.....	45	89	29	118	.....	255	255	418
Books	.....	.....	.....	28	27	55	.....	14	14	69
Note-Books	4	33	37	2	27	29	.....	11	11	77
Identification Cards	.....	18	18	.....	1	1	.....	1	1	20
Bank Deposit Books	1	8	9	.....	9	9	.....	.....	.....	18
Documents	1	9	10	15	38	53	.....	2	2	65
Chains	1	.....	1	4	1	5	.....	2	2	8
Insignia	1	.....	1	9	11	20	.....	6	6	27
Relics,[1] Hair	.....	.....	.....	1	72	73	.....	.....	.....	73
Relics,[1] Bones	.....	.....	.....	.....	11	11	.....	.....	.....	11
Shoes	.....	.....	.....	2	4	6	.....	22	22	28
Miscellaneous Articles	59	12	71	206	220	426	.....	219	219	716
Decorations	.....	.....	.....	8	1	9	.....	.....	.....	9
Arms	.....	.....	.....	1	.....	1	.....	.....	.....	1

[1] Relics, *i. e.*, locks of hair or pieces of the bones of the deceased sent home for burial according to the Japanese custom.

Sect. VI. Postal Regulations.

Art. XVI. of The Hague Convention runs thus:

Bureaus of Information shall be entitled to freedom of transport. Letters, or drafts, and sums of money, as well as postal packages addressed to prisoners of war, or sent by them, shall be exempt from all postal dues, not only in the countries of origin and destination, but also in intermediate countries. Charitable gifts and relief in kind destined for prisoners of war shall be admitted free of import duty, and shall be transported free of cost on railways operated by the state.

During the late war, in virtue of a proclamation by the Department of Communications, all gifts and relief in kind for the prisoners shall be exempt from charges for carriage by the State Railways.

The Department of Finance further announced that such gifts and relief in kind shall be in all cases admitted free of duty when coming from abroad. On application, moreover, they shall be exempt from internal taxation.

The following is the official translation of the Postal Regulations:

Règlement postal concernant les prisonniers de guerre.

1. Les envois postaux concernant les prisonniers de guerre, désignés comme tels dans ce règlement, sont les correspondances internes ou internationales, expédiées ou reçues soit par les bureaux de renseignements sur le service de ces prisonniers, soit par ces personnes elles-mêmes.

2. Les envois postaux concernant les prisonniers de guerre sont régis d'après les dispositions générales relatives au service postal interne ou international dans tout ce qui n'est pas prévu par ce règlement.

3. L'expéditeur doit inscrire la mention ou "service des prisonniers de guerre" sur la face de ces envois.

4. Ces correspondances sont exemptées de toutes taxes postales, en vertu des traités.

5. Les récépissés pour des envois recommandés ou avec valeurs déclarées et des colis postaux, expédiés ou reçus par les prisonniers de guerre doivent être soit remis aux chefs des dépôts de ces personnes, soit donnés par eux.

Règlement pour les mandats de poste concernant les prisonniers de guerre.

1. Les mandats de poste concernant les prisonniers de guerre, désignés comme tels dans ce règlement, sont les mandats ordinaires in-

ternes et internationaux, expédiés ou reçus soit par les prisonniers de guerre, soit dans l'intérêt de ces personnes.

2. Les mandats de poste concernant les prisonniers de guerre sont régis d'après les dispositions générales relatives aux mandats internes ou internationaux, dans tout ce qui n'est pas prévu par ce règlement.

3. Ces mandats sont exemptés de toutes taxes, en vertu des traités.

4. L'expéditeur de ces mandats doit déposer, au bureau de poste, l'application avec la mention "Service des prisonniers de guerre."

5. Les fonds, les titres et les autres documents à livrer aux prisonniers de guerre à l'égard de ces mandats sont remis aux chefs des dépôts de ces personnes sans la formalité d'autorisation.

6. Les chefs des dépôts des prisonniers de guerre peuvent, au nom de ces personnes et sans la formalité d'autorisation, faire au bureau de poste des demandes de toute nature à l'égard de ces mandats.

Sect. VII. Support and Pay of Prisoners of War.

Art. VII. of The First and Second Hague Convention declares:

The government in whose power prisoners of war happen to be is charged with their support. In the absence of a special understanding between the belligerents, prisoners of war shall be treated, in respect to food, lodging, and clothing, in the same way as the troops of the government which has captured them.

In the Russo-Japanese War Japan went a step farther than the principle of this rule, and gave to Russian prisoners of war better treatment than that given to her own troops.

As to the Pay of Prisoners we had great questions.

Art. XVII. of The Hague Convention says:

Les officiers prisonniers pourront recevoir le complément, s'il y a lieu, de la solde qui leur est attribuée dans cette situation par les règlements de leur pays, à charge de remboursement par leur gouvernement.

Note the English translation:

Art. XVII. Officers who are prisoners of war shall receive the portion, if any there be, of the pay allowed them, as prisoners of war, by the regulations of their own country, on condition that it be reimbursed by their own Government.

(By Davis.)

Art. XVII. Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

(By Toll.)

Professor Holland translated this article in his work, *The Laws and Customs of War on Land*, as follows:

Officers taken prisoners may receive, in proper cases, the full pay allowed them while in this position by the regulations of their own country, the amount to be repaid by their Government.

The French original is quite ambiguous, and it is difficult to say which of the translations is correct. At a meeting of a committee of our Foreign Department Japan discussed it, but could not come to a decision. The rule ought to be made more clear. During the Russo-Japanese War, however, there was no occasion to put the rule into practical application; for Russia made a regular remittance of money to the French Consul, and it was distributed to Russian prisoners every month.

The following table shows the amounts distributed, namely:

Generals.	From Colonel to Major.	From Captain to Second Lieutenant.	Warrant Officers.	Non-Commissioned Officer.	Chief of Sergeant and First Sergeant.	Second Sergeant.	Soldiers.
150 yen	75 yen	50 yen	41 yen	25 yen	3 yen	1 yen	50 cents

In The Second Hague Convention the real meaning of the article is made quite clear. It runs thus: Officers who become prisoners shall receive the pay to which officers of their grade are entitled in the country where they are being detained, the amount to be repaid by their government.

Sect. VIII. Labour of Prisoners of War.

Art. VI. of The First Hague Convention says:

The state may employ prisoners of war as labourers, according to their rank and aptitude. These labours shall not be excessive, and shall have no connection with the operations of the war.

Prisoners may be authorised to be employed in the public administration, or by private individuals, or on their own account.

Work done for the state shall be paid for in accordance with the rates of pay allowed to military persons of the national army when engaged upon the same work. When work is done for other departments of the government, or for private individuals, the conditions of labour shall be regulated by agreement with the military authorities.

The pay of prisoners shall be employed to ameliorate their condition, and the surplus, after the expenses of their maintenance have been deducted, shall be paid over to them at the instant of their liberation.

Based on the principle of this rule, Japan issued the following regulations:

REGULATIONS OF THE SUPERINTENDENT OF PRISONERS WHO ARE EMPLOYED IN ROAD-BUILDING.

ART. I. The labour of prisoners must be less than eight hours per day, beginning at 8 o'clock a.m. and ending at 4 o'clock p.m.

ART. II. Prisoners in service have holidays on every Sunday, every great festival day, and every great Russian festival day.

ART. III. For the present, 30 prisoners are employed in this service, and a petty officer and a soldier are appointed as their superintendents, and also a constable from the local police office.

The number of superintendents, as well as the number of prisoners in service, may be increased if it is necessary.

ART. IV. Prisoners in service must return to their prison barrack every day, and are not allowed to stay outside.

ART. V. Prisoners' and their superintendents' railroad fare between the prison barrack and their working place must be paid by the Iyo Railroad Company.

ART. VI. For the present, interpreters should be despatched from the prison barrack at Matsuyama.

ART. VII. Monthly payment is allowed regarding the payment of wages of prisoners to the government, and the company must pay it to the paymaster of the prison barrack at Matsuyama.

The regulations were issued, but Japan as a state did not impose labour on the Russian prisoners. As to employing the labour of prisoners by private individuals, there was but one case, which was at Himeji, where a private individual caused certain Russian prisoners to make leather. From olden times Himeji had been noted for producing leather; and it was from a desire to learn the Russian method of making leather that the prisoners were employed there. The reason that the Japanese Government did not make use of the labour of Russian prisoners, notwithstanding their having issued regulations about it, was that even a simple superintendent of so many Russians required a rather large number of our officers, and it would have required several

other arrangements to make the prisoners work as labourers. Japanese individuals also did not employ the labour of the Russians, because they did not find any special need of Russian labour in addition to the native labour, which satisfied nearly every demand. No, these were not all. There was another cause, a cause much more important, namely: Russian prisoners themselves refused to work. Some stated that they did not want to work so long as the Japanese Government supported them, and that even if they did they would not work for Japanese wages; while others declared that they would work for their own country, but not for their enemy. Thus they refused to take labour, not according to the principle of International Law, such as The Hague Convention, but from their feelings as individuals.

Here it is necessary to study the following point:

Relation Between the Labour and Support of Prisoners of War.

Art. VII. of The First and Second Hague Conventions says that the government in whose power prisoners of war happen to be is charged with their support. Prisoners are fed and clothed at the expense of the state which holds them in captivity, and they sometimes also receive a cash allowance.[1]

During the war of 1870 France paid to officers from £4 to £13 10*s.* per month, according to their rank, and to private soldiers 7.50c. per day. Germany was not so liberal; privates received nothing, and officers from £1 16*s.* to £3 15*s.* per month. (D'angeberg, No. 694.)

It, however, was formerly the custom for each state to pay the cost of the maintenance of its prisoners in the enemy's country, and when advances were made by the enemy for the subsistence of the prisoners accounts were sometimes balanced from time to time during the war, and sometimes at its termination.

Several treaties—e. g., those of Paris in 1763 (De Martens, Rec. i. 64), of Versailles in 1783, between England and the United Provinces in 1783, between the United States and Prussia in 1785, of America in 1802, of Paris in 1814 (Nouv. Rec. ii. 16), and of Ghent in 1814—contain stipulations for repayment of the amount expended on either side.

[1] Hall, p. 424.

According to this new principle, a State which keeps prisoners of war in captivity undertakes on one part to pay the expenses of supporting them, and on the other can impose labour on them; and taking Arts. VI. and VII. of The Hague Convention as supplementing each other, the State has the right of deducting the expenses of their maintenance out of the wages earned by their labour.

But it is a question whether the new principle is feasible in practice or not. According to the actual state of things during the Russo-Japanese War, Russian prisoners declined to take labour, and Japan did not force it, the result being that the Japanese Government had to pay the expenses of supporting Russian prisoners without being able to deduct anything out of the wages that they should have earned. Consequently it is not a practicable rule to make it the obligation of a State to support prisoners as prescribed in Art. VII. on the reason or reciprocation of its having the right of imposing labour on them.

At the end of the Russo-Japanese War, Japan and Russia agreed by the Portsmouth Treaty to refund to each other the expenses paid out on account of the prisoners of war. This was clearly the restoration of the old principle, and apparently it is a principle feasible in practice. Therefore it is believed that Article VII. of The Hague Convention ought to be corrected accordingly.

Sect. IX. Wearing Swords by Prisoners.

Prisoners from Port Arthur, having an idea of honourable capitulation and having had money distributed to them by General Stoessel at capitulation, were very haughty towards other prisoners. Among them there were many who resisted the orders to take away the swords they wore. The Russian officers who were made prisoners of war by the capitulation of Port Arthur were sent to Japan with their swords by them. One of the terms of the capitulation allowed them to wear their swords, so that they thought it would be right to wear them

even after arriving in Japan. They were advised to take off their swords by the superintendent regulations at Matsuyama, but they did not comply. On the 19th of January, 1905, an order was issued to the effect that the swords the prisoners were wearing would be taken away at 10 o'clock a.m. on the 20th at prison barracks. The captured officers petitioned for delay, and it was granted by Japan's authority. Then the higher officers stated that while they were too conscientious to deliver their swords themselves they would have no objection to have them taken away by the Japanese committee. Thereupon Captain Yoshimatsu visited the chambers of the captured officers of higher rank and gently took away their swords. Then the Japanese officers, calling the prisoners of lower rank to the office, took away their swords, finishing the ceremony at half-past one in the afternoon.

At half-past two in the afternoon the committee, accompanied by an interpreter visited the branch prison barrack at Mioseiji, and called several prisoners of high rank to the office and ordered them to remove the swords they were wearing. Some of them complied, but others raised objections. Thereupon the committee entered the prisoners' chamber with the interpreter and commanded them to take off their swords. There were a few officers who gave up their swords themselves, but when two officers angrily broke their swords, all the others imitated them and confusion arose. Two of them were placed under arrest, and others were advised to deliver their swords. But at last the swords were taken away at the Ichibancho Barracks at 4.40 in the afternoon of the same day.

The Russian officers complained, and sent several notes through the hands of the French Minister.

But Regulations on this point are clear. The Imperial Government of Japan sent a reply to the French Minister on the 16th of March, 1905, stating that the protest of the Russian Government had no grounds, because those Russian officers who declined to be released by parole in Port Arthur and who chose to be prisoners at Matsuyama must be treated just

as other prisoners are, according to Art. VIII. of annex of the Hague Convention. In fact, they were allowed to wear their swords at the time of capitulation, but they must surrender them when they became prisoners of war, according to Art. X. of Regulations for Prisoners' Treatment. The swords of Russian prisoners were returned to them at the time of their release by Art. XXIX. of the same Regulations.

Sect. X. Prisoners' Offences.

The offence to which prisoners are most tempted is that of attempting to escape.

Theoretically we cannot say that prisoners ought not to escape. Nay, it is considered proper, because, though unfortunately having fallen into enemy's hands, yet it may be the loyal combatants' earnest desire to serve their own country if chance allows it. If they should be successful in escaping, they would not be punished for doing so, on their recapture. But from the view point of the authorities who interned them, the escape of prisoners must be prevented by all means, so as to decrease the enemy's fighting force. Among prisoners interned at Matsuyama, there were 6 officers and 13 petty officers and soldiers who made unsuccessful attempts to escape and were punished by Court-martial.

A peculiar offence is theft of electric force. When a member of the Electric Light Company was despatched to repair glass lamp chimneys of electric lights in Tairinji Prison Barracks at Matsuyama, one day in September, 1905, he found that a bulb of 16 candle power had been replaced by one of 32 candle power. On inquiry, it was found that Greeve, Second Lieutenant of the Russian Navy, had bought a higher power bulb in the city and was using it in place of the 16 candle-power bulb which was being paid for. These men said that in Russian warships it is permitted to use a higher electric power in this way, and if necessary they will pay the cost. This means that theft is not an offence if the offenders pay the price, and that they offended because they are accustomed

to offend. Of course there are some lawyers who persist that the theft of electricity does not amount to an offence.

But the Electric Light Company had been receiving an appreciable pecuniary damage, and such an offence must be punished. Accordingly they were punished by Japanese authorities. The following is the table, showing the offences and punishment of the Russian prisoners of war:

A TABLE SHOWING THE OFFENCES AND PUNISHMENTS OF THE RUSSIAN PRISONERS OF WAR.

Offences / Grades / Punishment	Attempted Escape.				Theft.				Breach of Law.				Violent Conduct.				Secret Correspondence.				Suspected Arson.				Grand Total.
	Officers.		Petty Officers.		Officers.		Petty Officers.		Officers.		Petty Officers.		Officers.		Petty Officers.		Officers.		Petty Officers.		Officers.		Petty Officers.		
	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	Army.	Navy.	
Confinement to Barracks — First offence	...	...	111	77	...	...	13	2	...	...	281	47	...	...	34	12	...	1	...	...	...	...	...	...	578
Confinement to Barracks — Repetition of an offence	...	...	5	...	...	...	...	...	...	...	25	...	...	...	5	...	...	...	...	...	...	...	...	...	35
Imprisonment — First offence	4	...	...	...	...	...	...	...	26	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	31
Imprisonment — Repetition of an offence	...	...	...	...	...	...	...	...	3	...	...	...	2	...	...	...	...	...	...	...	...	...	...	...	5
Open Arrest — First offence	2	...	2	...	...	...	...	...	31	5	5	...	...	1	...	...	1	...	...	...	...	...	...	...	47
Open Arrest — Repetition of an offence	3	...	...	...	...	...	...	...	8	...	...	...	2	...	...	...	...	...	...	...	...	...	...	...	13
Reprimand — First offence	1	...	8	1	...	...	...	...	10	2	6	...	2	...	7	...	...	...	...	...	...	...	5	4	46
Reprimand — Repetition of an offence	...	...	...	...	...	...	...	...	2	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	3
Total — First offence	7	...	121	78	...	...	13	2	67	7	292	47	3	1	41	12	1	1	...	...	...	...	5	4	702
Total — Repetition of an offence	3	...	5	...	...	...	...	...	13	...	25	...	5	...	5	...	...	...	...	...	...	...	...	...	56
Total number of offences	10	...	126	78	...	...	13	2	80	7	317	47	8	1	46	12	1	1	...	...	...	...	5	4	758

Sect. XI. The Sick and Wounded.

The Japanese Government was so careful of its obligation to receive and care for the sick and wounded among the Russian prisoners, in strict conformity to Art. VI. of the Red Cross Convention, that those who were slightly wounded were sent back to the interior of Japan by military hospital ships or the hospital ships belonging to the Red Cross Society, and those severely wounded were treated until it was possible to send them to Japan in safety. In all of these cases Japan never made any distinction between her own soldiers and those of Russia.

At the surrender of Port Arthur the Japanese Army received many sick and wounded Russian prisoners. For their accommodation many new temporary hospitals were opened, and besides the already established hospitals belonging to the Russian Army, Navy, and the Red Cross Society, the Japanese Government received and treated them in nineteen hospitals. After the advancement of the Third Army northward, 145 physicians and pharmacists belonging to the Liangtung Garrison Army and the Japanese Red Cross Society and 1088 nurses laboured earnestly for their medical treatment and care, assisted by 136 Russian physicians and pharmacists who belonged to the Russian Army and Navy, and the Red Cross Society, and 2790 sick nurses, female sick nurses, and chaplains.

At the time of the surrender of Port Arthur 17,000 Russian sick and wounded came into the hands of the Japanese for treatment. Although their language and customs were different from those of Japan, they were abundantly satisfied with the treatment of the Japanese, who did their best in nursing them.

Mr. Barashoff, the President of the Committee of Russian Red Cross Society at Port Arthur, pronounced the treatment of the Russian sick and wounded by the Japanese Imperial Medical Staff to be perfect, and said that their management

of business was as careful and clever as their medical practice was skilful. The 1700 Russian sick and wounded were well enough in a few months to be sent to Japan, so that when Mr. Barashoff left Port Arthur he sent a letter of thanks to General Ijichi, the commander of the fortress.

The Imperial Navy received several wounded prisoners in the Naval Hospitals, and treated them medically without making any distinction between them and her own men. In 1904 there were only 18 prisoners who were under the care of Sasebo Naval Hospital. On May 27 and 28, 1905, the famous Japan Sea fight took place. After this battle the Russian sick and wounded who were received by the Sasebo Naval Hospital, the Maizuru Naval Hospital, the Tsushima Defence Detachment Hospital, and the Hamada Military Hospital, were over 338 in number. On the other hand, there were 726 wounded in 1904 and 6790 in 1905 among the prisoners who were interned in the prison barracks, and many sick as well. Thereupon, the Art. XII. of Minutiæ of Rules of the Prisoners' Treatment provided that the prison barrack can, if necessary, have a hospital chamber, providing sanitary materials, clothes, beds, and furniture equal to the military hospitals, and accordingly hospitals were opened in prison barracks at Matsuyama, Hamadera, and Narashino, so that prisoners who were sick and wounded could be sent immediately from the battle-field to the barracks, where they could be taken to the hospital. In one case there was an epidemic, and the patients were taken to the Military Preparatory Hospitals to receive the same kind of medical treatment as the patients of the Japanese army, according to Art. XIII. of the same Minutiæ.

Prisoners had especially good care because the prison barrack, following Art. XIV. of the Minutiæ, not only employed the regular military surgeons attached to the garrison, but also caused the sick and wounded among the prisoners to be treated by the surgeons and doctors of the Red Cross Society who were under the superintendence of the regular military surgeon. Thus prisoners enjoyed the most improved medical and

surgical treatment, and were given the care of faithful male and female nurses.

There were 79,817 Russian sick who were treated medically in the military and naval hospitals and the hospitals connected with the prison barrack, and there were 77,494 patients who were restored to health. (See the Table No. III.) Deceased numbered 373. Sick and wounded prisoners who on recovering were deemed incapable of further military service were not interned with the others, but the Japanese Government, conforming to Paragraph 2 of Art. VI. of the Red Cross Convention released and sent back all of those who were considered incapable of further military service, with the exception of some who could serve their country with their mental powers, requiring of those sent that they do not take the arms again during the war, as in the Art. XXIII.

The Russian sick and wounded who became prisoners at the surrender of Port Arthur were 4319 in number, 3438 being military officers and soldiers and 601 being naval officers and sailors.

Seventeen voyages were made from Port Arthur to Chefoo from March 5 to May 22, 1905, to deliver the men and Russian medical attendants into the charge of the Russian Consul at Chefoo. The returning of permanently disabled Russian prisoners from the interior of Japan began October 23, 1904. There was an old paymaster, 12 petty officers and soldiers, and 34 medical members. They were delivered to the French Consul at Kobe, and the total number of prisoners sent back at the eight different times is shown in the annexed Table No. I. It is noteworthy that all Russian prisoners who lost eyes or limbs in the field of battle were given artificial members through the charity of Her Majesty the Japanese Empress, as shown in annexed Table No. II.

Among many Russian prisoners there was one military officer and 123 petty military officers and soldiers and 9 petty naval officers and marines who received artificial limbs, and one military and one naval officer, 17 petty military officers

and soldiers and two petty naval officers who received artificial eyes.

Fourteen hundred and fifty-three Russians who died in Field Hospitals, Hospitals at Port Arthur, or prison barracks or during the journey to the interior, were buried, following the Arts. XXVI. and XXVIII. of Minutiæ. In the field the Japanese authorities paid due regard to their rank and grade in burying the dead, and made Buddhist priests attached to the army perform their religious ceremonies. In the interior they had the pastors of Russian Catholic Churches perform their religious rites, and buried the dead in the Military Burial-place, and where it was found to be narrow, they selected some other suitable place. The wills of prisoners were received and drawn up on the same conditions as for soldiers of the national army, as the Art. XIX. of The Hague Convention dictates, yet the Japanese allowed them to make the wills according to the effectual forms in their own country, if it was their desire. Conforming to the Art. XXXI. of the Minutiæ, these wills, with bequests, were sent to the Information Bureau. If the Articles bequeathed were very hard to preserve, then the Japanese changed them to money by selling them, and sent the money to the Information Bureau. The Information Bureau sent these wills, bequests, or money to the French authorities, who sent them to the families or relatives of the deceased persons.

I. Table on next page shows prisoners who were delivered to French Consul at Kobe for the reason that they were incapable of serving though recovered, or who were discovered to be members in the medical service after being received.

Grade.	Released Oct. 23, 1904.	Released Feb. 24, 1905.	Released April 22, 1905.	Total.
Paymaster	1	.....	.....	1
Military or Naval Physician	3	4	3	10
One who takes charge of Physician	1	.....	4	5
Pharmacist	1	.....	.....	1
Chief of Sick Nurses	20	12	68	100
Sick Nurses	9	.....	.....	9
Members in Medical Service	.....	.....	68	68
Civil Officers	.....	.....	1	1
Benevolent Sick Nurses	.....	.....	1	1
Soldiers	12	5	.....	17
Soldiers under one's personal command	.....	5	1	6
Missionaries	.....	1	.....	1
Servant	.....	1	.....	1
Merchant	.....	.....	1	1
Postman	.....	6	.....	6
Total	47	34	147	228

Remarks. Russian members in medical service were never treated as prisoners by the Japanese authorities, but those who were captured on the battle-field and could not be sent back to the outposts of the Russian Army were sent into the interior of Japan and were released there.

II. A table showing the number of Russian prisoners who were given artificial limbs and eyes by H. I. J. M. the Empress:

	Artificial Limbs.					Artificial Eyes.					Grand Total.
Grade	Army.		Navy.		Total Limbs.	Army.		Navy.		Total Eyes.	
Rank	Officers.	Petty Officers.	Officers.	Petty Officers.		Officers.	Petty Officers.	Officers.	Petty Officers.		
Prison Barracks.											
Sendai	....	.....	....	.....	.....	....	1	....	....	1	1
Hamadera	....	11	....	3	14	....	7	....	1	8	22
Fushimi	....	.....	....	.....	.....	....	....	1	....	1	1
Matsuyama	....	72	....	3	75	1	9	....	1	11	86
Zentsū-ji	....	19	....	1	20	....	....	....	....	....	20
Fukuoka	1	21	....	2	24	....	....	....	....	....	24
Total	1	123	....	9	133	1	17	1	2	21	154

III. A TABLE SHOWING THE DISEASES AMONG PRISONERS.

Diseases.	In Hospitals Connected with Prison Barracks.			In Ordinary Military Hospitals.			In Ordinary Naval Hospitals.			Grand Total.		
	No. Patients.	No. Recoveries.	No. Days Under Treatment.	No. Patients.	No. Recoveries.	No. Days Under Treatment.	No. Patients.	No. Recoveries.	No. Days Under Treatment.	No. Patients.	No. Recoveries.	No. Days Under Treatment.
General debility	2,776	2,764	34,050	1,077	847	49,772	....	....	.....	3,853	3,611	83,822
Disease of the nervous system	1,233	1,223	20,324	203	113	9,498	....	....	.....	1,436	1,336	29,822
Disease of the respiratory organs	12,035	12,009	143,945	789	485	56,703	....	....	.....	12,824	12,494	200,648
Disease of the circulatory system	273	272	6,097	82	55	3,577	....	....	.....	355	327	9,674
Disease of the digesting organs	19,896	19,659	222,252	1,477	1,319	47,824	....	....	.....	21,373	20,978	270,076
Disease of the urinary and generative organs	673	631	14,920	76	57	3,339	....	....	.....	749	688	18,259
Venereal disease	1,942	1,850	63,182	131	104	7,432	....	....	.....	2,073	1,954	70,614
Disease of the eye	5,465	5,439	65,342	154	133	6,381	....	....	.....	5,619	5,572	71,723
Disease of the ear	2,688	2,649	34,490	53	49	2,187	....	....	.....	2,741	2,698	36,677
Skin disease	14,549	14,429	189,642	438	397	17,277	....	....	.....	14,987	14,826	206,919
Disease of the organs of locomotion	3,314	3,249	48,478	139	110	5,882	....	....	.....	3,453	3,359	54,360
Wounds and accidents	5,464	5,337	75,780	4,590	4,048	483,624	300	266	28,628	10,354	9,651	588,032
Totals	70,308	69,511	918,502	9,209	7,717	693,496	300	266	28,628	79,817	77,494	1,640,626

Sect. XII. Crews of Merchantmen.

The question "who may be prisoners" may be decided by the First and Second Hague Conventions. Art. III. says:

The military forces of the belligerent parties may be composed of combatants and non-combatants. In case of capture by the enemy both shall be entitled to be treated as prisoners of war.

By Art. XIII. the following persons may be prisoners under certain conditions also.

Individuals who accompany an army without forming an integral part of it, such as correspondents and reporters of newspapers, sutlers and contractors, who fall into the hands of the enemy, and whom the latter deem it expedient to detain, are entitled to be treated as prisoners of war, on condition that they are provided with certificates of identity by the military authorities of the army which they accompany.

Generally speaking, it is clear from the rules of International Law that sovereigns and their families, who have most important relations with the state business, may be treated as prisoners, but it is a question whether sailors of merchantmen may be prisoners or not.

Conforming to the opinions of many publicists, there is no objection theoretically for treating sailors of merchantmen as prisoners, and practices agree in several cases.

During the Russo-Japanese war, Japan was more liberal than Russia. Only crews of merchantmen who formerly served in the navy were treated as prisoners, and others were released. On the 21st of Feb., 1904, the Japanese Minister of Navy gave instructions to the Commander of the Sasebo Naval station that when Russian vessels were confiscated as rightful prizes at Prize Court, their masters and crews may be released on parole not to serve again during the same war, and they may be given passage from Nagasaki to Shanghai, if they want it, in all cases except contraband persons and those whom it was considered to be necessary to intern.

To put this instruction into practice the following rules were issued:

1. Those crews who have their nationalities in neutral states may be delivered with their name lists to consuls of their own country. This list must be sent for the information of consul previously.

2. Those who have their nationalities in neutral states but have no consuls at Nagasaki, or whose consuls refuse to receive them, may be released immediately.

3. Japanese may be released immediately.

4. Russians may be delivered to French Consul at Nagasaki, but if consul does not choose to receive them, they may be released on condition that they will leave Japan by the mail steamers as quickly as possible.

5. If there are some whom their consuls at Nagasaki do not choose to receive and who have not money necessary to leave Japan, give them the free passage from Nagasaki to Shanghai.

NUMBERS OF RELEASED CREWS OF CAPTURED RUSSIAN VESSELS.

Name of Ship.	Russians.	Chinese.	Germans.	Norwegians and Danes.	Koreans.	Japanese.	Total.
Ekaterinoslav...	107 [1]	0	.....	.....	.....	.....	107
Mukden.....	29	21	.....	.....	1	.....	51
Argun.....	35 [2]	39	.....	.....	.....	2	76
Manchuria....	27	0	.....	1	.....	.....	28
Russia.....	15	6	.....	1	.....	.....	22
Mihail.....	12	84	5	.....	1	12	114
Alexandor.....	4	1	.....	.....	1	1	7
Nikolai.....	1	1	.....	.....	7	.....	9
Total.....	230	152	5	2	10	15	414

[1] Among them sick, 26. [2] Among them sick, 3.

Japan captured Russian merchantmen, but did not destroy a single vessel. Contrary to this, Russians sank all Japanese merchantmen they saw, and few were captured. The crew on board of vessels they sank, were treated as prisoners. Those so treated were the *Hanyei Maru*, the *Kinshu Maru*, the *Izumi Maru*, the *Hitachi Maru*, and the *Sado Maru*. The S. S. *Haginoura Maru* was a common merchantman, but its crew was not released. In March 27, 1905, the Japanese Govern-

ment entered into negotiation with the United States on the ground that among 295 Japanese non-combatants interned as prisoners in Russia there were sick nurses and merchants who could not be treated as prisoners under the Red Cross Convention and international practice, so that they must be released. They further negotiated with the Government of the United States to request the exchange of prisoners, but previous to the Russians carrying out this request peace was restored.

In theory, a calm criticism of these facts reveals no reason to blame Russia, but in comparison with the more liberal conduct of Japan they cannot escape accusation of cruelty.

The author of this work is very glad to see the Second Hague conference passed the following regulations, as he expected:

Regulations Regarding the Crews of Enemy Merchant Ships Captured by a Belligerent.

ART. V. When an enemy merchant ship is captured by a belligerent, such of its crew as are nationals of a neutral state are not made prisoners of war.

The same rule applies in the case of the captain and officers, likewise nationals of a neutral state, if they promise formally in writing not to serve on an enemy ship while the war lasts.

ART. VI. The captain, officers, and members of the crew, when nationals of the enemy state, are not made prisoners of war, on condition that they make a formal promise in writing not to undertake, while hostilities last, any service connected with the operations of the war.

ART. VII. The names of the persons retaining their liberty under the conditions laid down in Art. V., paragraph 2, and in Art. VI., are communicated by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

Sect. XIII. Russians in Medical Service, Non-Combatants and Deceased.

Russians in medical service, who were captured by our military or navy, number over 4549. They were never treated as prisoners. At the time of surrender of Port Arthur, there were 214 officers, 2361 petty officers and soldiers, and 215 female sick nurses and others. After the capitulation, they

engaged in medical treatment or in the care of Russian prisoners, sick and wounded in the hospital of Port Arthur, as Art. IX. of Surrender Convention dictates, but upon sending the prisoners to the interior, it ceased to be necessary for them to stay there, and later 37 officers and 27 priests and others returned home via Nagasaki. On March 1, 3, and 4, 1905, 360 medical men returned home from Chefoo, whither they were sent by the Japanese Government, and the remaining 2366 members of the Russian medical staff also returned from Chefoo where, along with the permanently disabled Russian soldiers and sailors, they had been delivered to the Russian Consul. Besides, there were many Russian military surgeons, those belonging to the Russian Red Cross Society, Russian Field Hospitals and Ambulances, crew of Hospital ships, and chaplains whom the Japanese Imperial Government released as soon as possible.

There being a military surgeon who was captured at the field of Kiu-lien-cheng on May 1, 1904, and who was desirous of treating and caring for wounded prisoners in Japan, the Japanese authorities sent him back to Japan with 6 sick nurses whose rank was not clear. Many were released and sent home as soon as they were discovered to be members of medical corps when they were brought to Japan. These were released and returned home from Kobe, the number being 833. Members of the medical corps were sent back to the interior at their own request or strategetically. They were never interned in the prison barracks, but were lodged in Military Hospitals, treated equally with Japanese medical members, and restricted only in the examination of their correspondence. On May 22, 1904, the Japanese Minister of War ordered Chiefs of Legions to give provisions, furniture, and tools to Russian medical corps according to their grades, and to allow them to go out freely or to reside in town. Of course, owing to the difference of language and customs, they felt it inconvenient to reside in citizens' houses and lodged in hospitals.

On October 23, 1904, a Russian surgeon, Cæsar Suveoff,

whose rank corresponds to Colonel, and 34 Russian medical men were delivered with 12 prisoners incapable of serving and an aged paymaster on the Russian cruised *Lurick*.

In connection with the description of the release of prisoners, the following is added:

Application for Discharge of Russian Officers Who Missed the Opportunity of Taking Parole at Port Arthur.

There were not a few Russian Officers who declined to take a parole at the time of the surrender of Port Arthur. But they now requested to be released on parole, having felt some inconveniences since their arrival at Japan.

On the 21st of April, 1905, eight Russian officers sent in a formal application for release through the French Minister, and the Japanese Government replied in the following sense:

Those prisoners who had hesitated to take a parole at the time of surrender of Port Arthur were specially given time for consideration by allowing them to perform it at Tailenwan, where on arrival of prisoners from Port Arthur, the taking of parole was granted every day to those who wanted it. Such being the circumstances, any application made by those who did not take advantage of that special opportunity, cannot be granted now.

Sect. XIV. Delivering of Prisoners of War.

On the 18th of Sept., 1905, the Japanese Government requested the United States to communicate with the Russian Government with regard to the delivering of prisoners of war. The Japanese proposal was as follows:

After the ratification of the Treaty of Peace, our Government wants to receive the Japanese prisoners and other captives in Russia at the western frontier of that country, and to deliver the Russian prisoners and other captives in Japan at the three ports of Nagasaki, Kobe, and Yokohama.

On the 3rd of Sept., the State Department informed the Japanese Minister that the Russian Government entirely shared view of Japanese Government for acceleration of the

preparation for the delivery and accepted the proposition for the giving back of the Japanese prisoners on the western frontier of the Empire and for receiving Russian prisoners at Nagasaki, Kobe, and Yokohama as soon as preparations were made, and that the Russian Government would immediately communicate the Japanese Government through the usual diplomatic channel.

The following was a proposal of the Japanese War Department regarding the delivery of prisoners:

Tokyo, 6th October, 1905.

YOUR EXCELLENCY:

I beg to propose the following rules for the delivery and receiving of prisoners of war and other captives to be carried out between Japan and Russia after the ratification of the Treaty of Peace, and want to be informed of your opinion on the same.

Yours respectfully,

(Signed) S. TERAUCHI,
Minister for War.

His Excellency Count Katsura,
Minister for Foreign Affairs.

In case Foot Colonel Kikutaro Oi, at Berlin, is appointed Special Delegate, in accordance with clause 1 of the following rules, you will please see that the staff of the Imperial Japanese Legation and Consulate at that place shall give the necessary assistance to the Colonel.

Rules.

1. For receiving the Japanese prisoners of war and other captives in Russia, the Japanese Government will appoint Foot Colonel Kikutaro Oi, Military Attaché to the Japanese Legation at Berlin, a Special Delegate, who will take charge of all the affairs.

2. Those Japanese prisoners of war and other captives received from Russia shall be shipped at Hamburg or Bremen, Germany, by merchant steamers chartered at those ports, and be brought to the port of Kobe under the superintendence of the highest senior officer among the prisoners.

3. If there be any among those returning from Russia who want to remain in Europe at their own expenses, but who are not soldiers or their attendants, the Special Delegate shall decide the application by consulting with the Minister or Consul.

4. The expenses to be borne by the government for sending back the Japanese prisoners of war and other captives shall be the actual amount disbursed. A cashier shall be appointed from among the pris-

oners, and the War Department shall give him an advance of money in rough estimate, which shall be settled after their return to Japan.

5. When the Japanese prisoners of war and other captives arrive at the port of Kobe, those belonging to the War Department and those belonging to the Navy Department shall be received by their respective Departments, while the others shall be allowed to go away as they like.

6. As to the delivery of the Russian prisoners of war and other captives in Japan, the Bureau of Information shall take charge; and those detained in Shizuoka and the east shall be delivered at Yokohama; those in Yamaguchi and the west, at Nagasaki; and those in other places, at Kobe, all to the Russian Special Delegate or his agent.

7. Out of the Russian prisoners and other captives, those who cannot be transported on account of wounds or illness shall be delivered to the Russian Special Delegate or his agent at the hospitals of the Prison Barracks, or the military or naval hospitals, after the general delivery shall have been completed.

8. The dates and other particulars of delivering the Russian prisoners of war and other captives to the Russian Government shall be arranged between the Director of the Bureau of Information and the Russian Special Delegate or his agent.

The proposal of the Russian Government was as follows:

French Minister to Count Kateura.

Légation de la Republique Française au Japon.
Tokyo, le 9 Octobre, 1905.

MONSIEUR LE COMTE:

Le Gouvernement Russe me prie de faire savoir a Votre Excellence qu'il considère Wirballen comme le point frontière le plus précise au transfert des prisonniers de guerre Japonais qui sont en Russe au nombre de 1866 dont 99 sont officiers.

Je serais reconnaissant à Votre Excellence de me faire connaître si le Gouvernement Impérial donne son approbation au choix de Wirballen, proposé par le Gouvernement Russe à cet effet.

D'autre part, ce dernier m'a fait exprimer le désir de connaître le nombre exact des prisonniers de guerre Russes, détenus actuellement au Japon, tant du armée de terre que du marine, et je prie Votre Excellence de vouloir bien me mettre en mesure de répondre à cette demande.

Venillez agréer, . . .

(Signé).

To this Japan gave her reply of agreement, reporting at the same time the number of the Russian prisoners in Japan.

The receipt of the Japanese prisoners in Russia was completed on the 15th December, 1905, at the frontier of the Russian Empire.

In concluding the account of the delivery of prisoners, the following statement cannot be omitted:

Summary of Conversation of General Daniloff about his gratitude for the kind treatment given by Japan to Russian prisoners.

General Daniloff, of Russia, who had gone to Japan to take delivery of Russian prisoners, completed his business, called on the Japanese Foreign Minister on the 19th of February, accompanied by the Russian Chargé d'Affaires. The General stated that he felt an extremely deep gratitude for the kind and cordial treatment given by the Japanese Government and authorities towards the Russian prisoners, as well as for the warm sympathy shown them by the Japanese people in general. Especially did he appreciate the kindness of her Majesty, the benevolent, philanthropic Empress of Japan, who had been so gracious as to give artificial eyes and legs to the wounded Russian prisoners. He further stated that when he went back to his own country he would report to his Majesty, the Russian Emperor, the above-mentioned gracious and cordial treatment shown to his countrymen. The Foreign Minister replied that the Japanese authorities had tried their utmost to give to the prisoners as much satisfaction as possible. The General then stated that during the long time of detention there might have been among the prisoners some who had shown insubordination or made trouble, but that it must have been due to misunderstanding among the prisoners themselves, or between them and other individuals, it being beyond question that the measures taken by the Japanese authorities had been as liberal and as kind as could be desired, for which he wanted to express his heartfelt thanks repeatedly.

General Terauchi, the Minister of the Army, and Admiral Saito, the Minister of the Navy, to Marquis Saionji, then Minister for Foreign Affairs.

They said that since the outbreak of the war the United States Embassy in Russia had taken much trouble and had done much to assist us in the superintendency and other business connected with the Japanese prisoners of war and other captives in Russia. It was especially so with Mr. Thomas Smith, the United States Consul, who was in direct charge of that business, and who also rendered not a small service for the interests of Japanese prisoners and other captives.

That the German Red Cross Society, as well as several other sympathising bodies, organised to entertain the Japanese prisoners showed a special kindness and good-will on their way home, and that they express their thanks to the above-referred-to benefactors to be conveyed through the proper channel.

Sect. XV. Prisoners and Religion.

Art. XVIII. of the First and Second Hague Conventions says:

Every latitude shall be allowed to prisoners of war for the free exercise of religious belief, in which shall be included the right to attend religious service, upon the single condition that they conform to the measures of discipline and police prescribed by the proper military authority.

During the war various means were taken by Japan in order to give mental and spiritual consolation to the prisoners. Newspapers and magazines were furnished, and several implements of sport were provided in the barracks. But the thing on which most importance was placed was to lighten their hearts by religion, and accordingly separate chapels were erected for the Roman Catholic sect, Greek sect, Mahometan sect, and Jewish sect. Those who worked most in religious matters were Bishop Nicolai and his missionaries, and it was at the beginning of May, 1904, that the "Prisoners' Religious Consolation Association" was organized within the Nicolai Missionary School under the support of several influential men, such as Saburo Shimada, Seijiro Niwa, and Soroku Ebara. The asso-

ciation then sent in to the Home Department an application for a permit to despatch missionaries to the prison barracks; and consequently Messrs. Suzuki, Sawabe, Morita, Ishikawa, Horie, Chiba, Senuma, and Yamada were despatched on the sacred mission.

The way in which Bishop Nicolai exerted himself to inspire, cheer and comfort the hearts of his unfortunate countrymen is worthy of all praise, and the impartial and liberal way in which not only Bishop Nicolai, but other religionists were allowed to perform their charitable work may be taken as an expression of the habitual attitude of the Japanese Government in such matters.

CHAPTER III.

THE TREATMENT OF THE KILLED.

Nobody can possibly bear any suspicion as regards to Japan's perfect conformity to stipulations of International Law concerning the treatment of the sick, wounded, and killed, and her pride is that her strict observance of various public stipulations, such as those of the Geneva Convention, or of The Hague Convention, with the application of the Geneva Convention to maritime warfare, was an outburst purely of Japan's chivalrous national spirit, without the least outward constraint.

The author quotes below Baron Suyematsu's article contributed to the January number of *La Revue*, 1905, which most felicitously anticipated the author's opinion:

After a battle, "sweeping" companies are at once told off to the duty of bringing in the wounded, friend or foe, and carrying them to the nearest surgical station or field hospital. The dead are brought to convenient spots, though care is taken to avoid an unseemly mingling of the bodies, and it is expressly enjoined on all that the dead shall be reverently handled, friend and foe alike, though deposited apart to avoid confusion, and all respect shown to the apparent rank of the deceased, to whichever side he may have belonged; for he shed his blood in his country's cause, and earthly animosities vanish with the passage beyond the veil.

So far as it is practicable or possible to do so, the name, rank, office, and regiment to which he belonged, is ascertained and recorded for reference in the case of every dead soldier, friend or foe, and all bodies are reverently covered by suitable matting or other coverings.

The places chosen for interment of the dead are to be at a distance from high roads, towns, villages, or camps—well away from watercourses or wells, on elevated sites, or on slopes where the soil is dry.

Officers are buried in separate graves: the common soldiers may be separately interred, or in numbers not exceeding fifty in one grave, as circumstances may permit, dependent upon the exigencies of the campaign. It is enjoined that the excavations must be deep, never less than one metre between the surface and the body laid, and that straw or boughs of trees or shrubs shall be plentifully strewn beneath, and lime, coke, or some such substance placed above, mounds being raised over all with the soil extracted in digging the grave. A suitably inscribed pillar, or other mark, is planted by the tomb.

According to the rank and position of the dead, the interment shall be attended as far as may be feasible with due honour, and whenever priests are available they shall be invited to perform religious rites at the graveside. This applies to ministers of the Christian faith, should they be at hand, and to both Russian and Japanese dead.

Anything belonging to the dead—excepting firearms, horses, maps, or military books and documents—shall be sent to the Prisoners' Intelligence Board, with full descriptions of the original owners.

It has been made the subject of special and almost surprised comment in an English journal that the French Embassy in St. Petersburg should have been able to report that large number of packages are regularly being received from Japan, enclosing articles found on the bodies of Russian officers who have been slain in battle. Trifling sums of one or two rubles have thus been forwarded, not to mention ikons and much jewellery. (See Part II., Chapter II.) A Mukden despatch, received by Reuter's Special Service, dated the 14th November, quotes the *Vestnik*, the only Russian newspaper possessing official sanction and published in the theatre of war, as bearing striking testimony to the scrupulous care of the Japanese for the relics and effects of the Russian dead found on the battle-field, and to the anxiety shown in sending such things to St. Petersburg. The journal praises this behaviour, and declares that General Kuropatkin recommends that a similar practice should be observed towards the Japanese dead.

"Loot," it was remarked, "does not enter into the Japanese plan of campaign." But in reality this circumstance should in no way be regarded as matter for surprise, since it is not only a dastardly act to rob the dead of their valuables, and a disgrace to the military profession, no matter to what country the culprits may belong, but those who might be disposed so to degrade themselves are warned by the Military Criminal Code, in the details of which the rank and file are carefully instructed in time of peace, that such unworthy acts, and also any cruel treatment of a wounded enemy or prisoner, or any

insult to a dead foe, constitute crimes which deserve, and will infallibly receive, the severest punishment.

In the Japanese field hospitals wounded enemies when brought in are treated with precisely the same prompitude, cared for in exactly the same way, and shown in every respect a tender kindness equal to that meted out to our own sufferers. The doctors attend to the cases in regular sequence, without regard to the nationality of the patient, as has been reported by the correspondents of many European and American journals. In fact the humane consideration shown to their foes by the Japanese is so widely known and appreciated that it seems almost superfluous to cite instances as attested by European correspondents, for Russians have themselves joined in vouching for the accuracy of these assurances.

It is somewhat painful to be obliged to reverse the picture and show what is on the other side in regard to the character of the common Russian soldier, and I shall therefore content myself with giving a brief note or two to prove that a high standard of honour cannot be said to prevail among them. In a recent issue of a Japanese paper, the fact was commented upon that Russian sailors who had been made prisoners had begged that their captors would not insist on their sharing the same quarters as the Russian soldiers who were also captives. The explanation of this dislike to be mingled with their fellow-countrymen was that the Russian sailor considers the soldier very much beneath himself in respect of discipline and personal habits, so much so that it is impossible for them to associate on equal terms. It strikes one as being very much a case of "the pot calling the kettle black," but their wishes have been acceded to, lest disorder should result. The other anecdote, the substantial accuracy of which there is no reason to doubt, comes from the battle-field itself, where two Russian soldiers were, by a truly remarkable combination of circumstances, killed by a single bullet. One was in the act of robbing the other! The hand of the thief was in the pocket of his wounded and prostrate comrade, his fingers grasping a coin, when death came to them both. It is inconceivable that a Japanese trooper would seek to rob the wounded, dead, or dying, still less his fellow-countryman.

Within the present month a Russian medical officer, Dr. Matureef, who was captured by the Japanese, has related his experiences, and they fully bear out my contention. He had lost his way, and so fell into the hands of the outpost guards. Having questioned him on various points, the Staff Adjutant told the Doctor that by the rules of the International Convention he was free, and he was quartered for the night at the building occupied by the Chief of Gendarmes, given good food, and well looked after. Four days afterwards he was

escorted by two cavalrymen towards the outposts of the Russian vanguard, the Japanese doctor of the cavalry staff thoughtfully providing him, as he explains in detail, with chicken, biscuits, lemonade, and cigarettes. When across the river separating the two armies Doctor Matureef was given a passport, and a compass was presented to him, so that he should have no difficulty in rejoining the Russian forces, which he succeeded in doing next day.

The Japanese soldier, it has been said, makes war as becomes a gentleman. It may not be quite fitting for me to express an opinion, but I venture nevertheless to say that the commendation thus bestowed is not ill deserved. And this brings me to the narration of a rather amusing incident. A Russian prisoner was being conducted by a young Japanese soldier to the Japanese camp, and was agreeably surprised to find the Japanese so kind to him. In order to show his appreciation the prisoner suddenly embraced his captor and sought to kiss him. But the Japanese trooper had had no experience of this kind of salutation, and accordingly, fancying that the Russian intended to bite him, he administered a severe thump on the back, and thenceforward led his captive at arm's length. Presently, on arriving at the camp, the Japanese reported the matter to his superior officer, and the whole affair was then explained on both sides, to the great hilarity of friends and foe. Comical as was the incident, it serves to illustrate the temper of our soldiers, and their liberal treatment of an enemy who may be at their mercy.

The truth is that Japanese soldiers are taught to be humane, for every Japanese child is brought up to believe in kindness to animals, and warned that he must never be cruel to any living thing. The injunction dates back to the days when the Buddhist faith held greater sway, for in those days when Buddhism was at the zenith of its influence in Japan, even Imperial decrees were often issued forbidding wanton *Sessho, i. e.*, killing the living. This sentiment seems to have been engrafted in the minds of the Japanese in general and the fact is so often noticed by the western writers who visited Japan. But the reluctance to take advantage of, or show disrespect to fallen or wounded foe, comes also from yet another source, for in *Bushido*, or principles of Japanese Knighthood, of which something has been said already, compassion for a beaten or surrendered foe forms one of the most conspicuous features, and the influence of *Bushido* has never been better exemplified, perhaps, than in these modern days of scientific slaughter.

The following regulations were issued by the Minister of War, May 30th, 1904:

REGULATIONS FOR CLEARING THE FIELD AFTER AN ENGAGEMENT AND FOR BURYING THOSE WHO HAVE BEEN KILLED OR HAVE DIED OF DISEASE.

(Official Translation.)

1. Immediately after an engagement, each unit should organise a detachment for clearing the field, for searching for sick, wounded, and killed, as well as for equipment, etc., left by them on the field.

The higher commanding officer will appoint a special detachment to carry out this duty.

2. The sick and wounded shall be dealt with according to the Field Regulations of the Army Medical Service, and the killed shall be honoured and respected according to their rank, whether they belong to the Imperial army or to the enemy.

3. As minute an examination as possible shall be made from the pocketbook, marks on uniform, identification tally, etc., as to the full name, rank, position, relatives, and regiment of any one found dead.

4. The corpses of those belonging to the Imperial Army shall be cremated, while those of the enemy shall be interred, except when contagious and infectious diseases are prevalent, when all corpses, even those belonging to the enemy, shall be cremated.

5. No burial shall be made until death has been definitely assured.

6. The Clearing Detachment shall collect separately the corpses of both armies, either in one place or in several places, and mats or matting shall be spread over them. Even when corpses cannot be collected together, steps must be taken to cover them.

7. When the necessary steps mentioned in clause 6 have been taken, the corpses shall be separated into those belonging to the Imperial Army and those belonging to the enemy, as soon as possible, and cremated or interred accordingly.

8. As regards the selection of ground for interment, the following provisions should be noted, especially 1 and 2:

(1) The ground must be some distance from any road, town, village, or garrison.

(2) The ground must be at a distance from sources of springs, streams, wells, or other sources of drinking water.

(3) The ground must be on high land or gentle slopes, and the soil must be loose and moré or less dry.

9. The corpses of those belonging to the Imperial Army should be cremated separately, and one of the bones (the larynx) sent home.

When circumstances prevent this being done, only the hair shall be sent home and the bones shall be buried temporarily on the field.

When circumstances prevent separate cremation, the N. C. O.'s and privates shall be cremated together and the hair only sent home.

10. The bones and hair sent home shall be buried in the cemetery at home according to clause 6 of the Regulations for the Burial of Soldiers.

On application, the bones and hair may be given to the relatives of the deceased to bury.

Remains buried temporarily in the field must be taken home eventually and buried in a cemetery at home.

11. In the case of corpses buried under the provisions of clause 9 the following should be noted:

(1) Bones of officers, warrant officers, and senior non-commissioned officers should be given separate burial.

(2) The bones of other ranks should also be buried separately, but, when circumstances do not permit, they may be buried together.

(3) In any case the bones of senior N. C. O.'s and warrant officers must be given separate burial.

12. In the case of interment of corpses belonging to the enemy the following provisions should be noted:

(1) The corpses of officers, warrant officers, and senior N. C. O.'s should be buried separately.

(2) The corpses of other ranks should also be buried separately or in numbers of less than 50 together.

(3) The graves should be one metre deep.

(4) The bottoms of the graves should be covered with branches of trees, or straw, upon which the corpses shall be placed, and a layer of lime, charcoal, ashes, or slag shall be placed over the corpses, and all necessary sanitary precautions taken.

(5) The earth removed in digging the graves shall be replaced over the graves so as to make a small mound.

13. The corpses belonging to the Imperial Army that are buried, shall be buried according to the same instructions as in the previous clause, some of the hair from each corpse being preserved.

14. When corpses belonging to the enemy are cremated, the bones shall be buried under the instructions contained in clause 11.

15. The graves of the dead of the Imperial Army shall be kept separate from those of the enemy, and proper marks shall be erected over both.

16. In every case of burial the proper funeral rites shall be observed, and shall be conducted by the Shinto or Buddhist priests, chaplains, or priests of any other religion.

17. When the corpses of inhabitants of the country are found on the field, they shall be buried as laid down for the enemy, but should they be claimed by relatives, they shall be handed over if possible.

18. The personal effects of the dead of the Imperial Army shall be packed with the bone and hair, addressed with the full name, rank, and regiment of the deceased, and the package forwarded to the Divisional Headquarters where the deceased was mobilised or to the office where the organisation of his corps took place.

19. The name, age, nationality, position, rank, and regiment of the dead of the enemy shall, if known, be entered on a list, and the list shall be sent by the Divisional Headquarters or by the officer left in command to the Prisoners' Information Bureau at Tokyo. Personal effects,

with the exception of arms, horses, and maps, shall be packed, and the package addressed with the full name and rank of the deceased and forwarded to the above-named office.

20. Effects belonging to dead inhabitants of the locality shall be handed to the local officials by the Headquarters or the troops, in order to be returned to the relatives of the deceased.

21. Arms, provisions, horses, maps, and other articles left on the field without an owner shall be dealt with by the Headquarters or troops of the district. All other articles, except those belonging to the Imperial Army, shall be regarded as trophies.

22. The manner of the burial rites, the disposal of articles belonging to the dead according to clause 18, the description and number of the articles shall be reported by the Headquarters of the district troops to the general officer commanding.

23. Dead horses shall either be buried or burned, and in burying them the provisions of 3 and 4 of clause 12 shall be noted, and special medical precautions taken.

24. These regulations shall apply to the treatment of dead and their effects in all places in the area of operations, even though not on the actual field of battle.

CHAPTER IV.

MEANS OF INJURING THE ENEMY.

Sect. I. False Accusations of the Russian Government against the Japanese Army Refuted.

As above referred to, His Majesty, the Emperor of Japan, declared in the Imperial Declaration of War that *the actions of the Japanese Army should be based upon International Law.* Two specialists of that science were attached to each of the different armies in Manchuria as legal advisers. Dr. Ariga was on the staff of the General Headquarters in Manchuria, and the Foreign Office, as well as the War Office, engaged Drs. Terao, Nakamura, Akiyama, Tachi, and the author, in making investigations concerning the legal questions involved, so that proper instructions might be given to the headquarters of the different Imperial Armies at the front. *To those who know the fact that such careful steps were taken by the Japanese Government, it can by no means be imagined that the army should take any action violating international law.*

It is to be greatly regretted that the Russian Government often spread false reports to the effect that steps had been taken in violation of International Law, and it is the purpose to describe the true state of affairs, and thus dispel the prevailing doubts, for the sake of Japan's honour, or rather for the sake of Justice.

I. *Concerning the Japanese Soldiers' Firing upon a Russian Train Flying the Red Cross Flag near Pulantien.*

The Japanese Army was accused by the Russian Government of firing upon a Russian train flying the Red Cross flag,

on May 6th, 1904. The report relative to this matter was as follows:

On the 16th May, 1904, the Russian Government sent a protest through the French Minister at Tokyo to our Government.

The Imperial Government had already commanded the authorities at the headquarters of the army at Manchuria to investigate the matter, and they had found that it was quite different from what was alleged. On the 23rd of May, 1904, the Japanese Minister for Foreign Affairs answered in the following sense:

The Russian Government has alleged that the Japanese troops attacked the Russian hospital train starting from Port Arthur under the Red Cross flag on May 6th. But an official report received by the Imperial Government from the commander of the Manchurian troops at the front says: "When a Japanese detachment approached Pulantien on the 6th inst., a train without any of the special marks required by the Red Cross Regulations, was sighted running northward from the direction of Port Arthur. The Russian soldiers in the train immediately fired upon the Japanese detachment, which, of course, replied. Then the train halted suddenly and a Red Cross flag was hoisted, whereupon the Japanese detachment stopped firing and proceeded to examine the case. But just then the train resumed its journey at full speed, and escaped without stopping at the Pulantien station."

According to another report, it is certain that the train was full of many healthy Russian soldiers, as well as officers both civil and military. If it had been a hospital train, as alleged by the Russian Government, it cannot be understood why it escaped without receiving the examination by the Japanese troops. The occurrence of that day is a case of the Russian abuse of the Red Cross flag to avoid the attack of the Imperial troops. In spite of this fact, the Russian Government intentionally confused the actions of the two parties and accused the Japanese troops of violating the Geneva Convention.

This is a false accusation.

In this affair M. Nypels argued as follows:

De Avondpost, May 14th, 1904.

A Russian Protest.

Russia seems not to be lucky even with her protests. In the beginning of the war Russia protested against the proceedings by which the Japanese began the hostilities, and she asked, at first, public opinion on that matter; but the protest has been judged ill grounded, because Japan did only what had already been done before under like circumstances, and even by Russia herself in her war with Turkey.

According to the daily newspapers, Russia has now again protested with the Powers which signed The Hague and Geneva Conventions, against the Japanese for firing, on the 6th of May, on a train which carried the Red Cross flag.

But what says Art. I. of the Geneva Convention of the 22nd of August, 1864? "Ambulances and hospitals which are in the service of armies are acknowledged to be neutral, and must be protected and respected as long as patients or wounded persons are in them. *The neutrality of ambulances and hospitals ceases when they are guarded by a military force.*"

The intention of this additional clause does not mean a police guard or a detachment in order to provide security there; in the *Manuel public par l'Institut de Droit International* it is said upon this point: "Ce qui niexclut pas la presence d'un poste de police"; but if a flag with the Red Cross is used as the protection for a force of any size, then its protective force ceases, and it is right; because by such an application the smallest ambulance could be used for the protection of large numbers of troops. In battle the necessities of war must take precedence of all, but humanity must be respected. If the belligerent parties wish not to take away all the value and meaning from this respect of humanity, then they must guard against the abuse of it, and they must be careful to avoid even a trace of making humanity the pretext for operations foreign to neutrality and inviolability. It is not only forbidden to use the Red Cross flag for the protection of troops, but also for the covering of war materials, or to avoid interruption in the transportation of papers, information, and correspondence relating to the war.

To justify the protest of Russia it must be proved that in the train which was fired at there were no other things than patients, wounded persons, women and children.

It seems to us that the Russian Government could not ascertain such facts by the 10th of May, with respect to a deed which was committed on the 6th instant in a turbulent district, far removed, and in a turbulent period.

But, even if this be certain, there is one more question: Did the Japanese fire at the train without ordering the train to stop? If the

summons was given and was not complied with, then the fault is on the Russian side; because those who expect protection on the ground of existing stipulations, must recognise that the adversary may also take advantage of the same stipulations. What Russia does with ships on the sea, Japan may do with railways on land. If it is true that a messenger was sent to meet the train to warn it to go back, and that Colonel Uranof, who was in the train, ordered "go ahead at full speed," then it may be supposed that the Japanese could not aim accurately at the train at a point which they wished to fire upon, and so they have, on this occasion, violated the Red Cross and abused humanity less than the Colonel who has to take the responsibility for the furious speed.

All these points depend upon the reports, which are only half true. Therefore it is not the purpose either to defend or to accuse this or that proceeding; but, on the contrary, to warn those who have already taken the side of either party in this question, to withhold judgment until the circumstances of the matter shall be better known.

G. NYPELS.

II. *The False Accusation of the Japanese Troops Firing upon the Russian Red Cross Flag.*

It was often reported by the Russian Government that Japanese troops fired upon their Red Cross flag. But in the course of time the true state of affairs became clear.

As an illustration of this, reference is made to the false accusation brought forward concerning the troops under General Kuroki.

A St. Petersburg telegram states that during the operations of June 26th and 27th Japanese troops under General Kuroki fired upon the Red Cross flag, killing many hospital assistants and wounding Dr. Roochkow; and that they committed barbarous acts of cruelties against the dead and wounded Russians left on the field, and that photographs had been taken of such acts in order that they may serve as proofs to be presented to the Hague Tribunal.

In connection with the above, the *Kölnische Zeitung* states that even the best disciplined are sometimes apt to commit excesses in the heat of battle. Japanese officers generally do everything in their power to prevent cruel acts, and they are usually able to compel their men to do so. As European eyewitnesses have reported, Japanese authorities have taken sever-

est measures against such acts. Japan has prescribed strict observance of the Geneva Convention on the part of her troops, which she must continue to do, as her aim is to be treated as an equal by European States. It can therefore be accepted as a fact that her army commanders will direct all their attention to avoid any cases which would bring discredit upon the honour of the Japanese army.

Thus the process of time manifests the true state of affairs and justifies the adage, "Honesty is the best policy."

III. *The False Accusation of the Japanese Troops Firing at the Russian Red Cross Hospital in Port Arthur.*

This will be treated in the chapter on Bombardment.

IV. *The Report that Japanese Soldiers Abused the Red Cross Flag in a Conflict near Chong-ju.*

The Russian Government tried to discredit the Japanese troops by publishing various false reports. The following is another instance of how the Russians were publishing false reports:

"According to a Russian telegraph agency, it is stated that a recent conflict at Chong-ju with the Japanese ended in a victory for the Russian army, the Japanese sustaining a loss ten times greater than the Russian. It is said that they had at least 50 dead and 120 wounded. The dismay of the Japanese was so great that they hoisted two flags of the Red Cross as a sign of surrender. Such a confusion among the Japanese was never seen during the war with China. Russian troops in Liao-yang were greatly elated by this first brilliant victory in Korea."

In an article entitled "Abuse of the Red Cross Flag," in the *Novoye Vremiya* of March 31st, it is said that after severe fighting in An-cheng, the Japanese soldiers took refuge in a native house and hoisted a Red Cross flag at two points, with the object of sheltering 200 able-bodied soldiers behind a few wounded, and waiting for reinforcements. This is a violation of Art. I., Geneva Convention of 1864. The Russians thus deceived will be compelled to fire upon the Red Cross flag in the future, and therefore it should be hoisted in a distant place before commencement of fighting.

The Japanese Government at once made an investigation into the above, relating to the Red Cross flag alleged to have been abused by the Japanese, but found it to be a fabrica-

tion. The following is the report made by the chief of the Temporary Dressing Station at Chong-ju:

Chong-ju, March 29, 1904.

The 1st Battalion of the 1st Regiment of the Guards Infantry started for Kasan at 6 a.m. on March 28th and followed the Guards Cavalry Regiment toward Chong-ju. At 11.45 a.m. a rifle fire was heard at Tokutatsu, about four thousand metres on this side of Chong-ju, towards which the battalion proceeded, light armed, at double time. When the battalion reached Igen, south of Chong-ju, at 12.20 p.m., our cavalry already had had some casualties; the enemy held and defended the Chong-ju Castle with great energy; but the battalion deployed themselves at once for an attack.

A temporary wound-dressing station was opened in a house by the roadside at Igen, about two thousand metres south of Chong-ju, and auxiliary stretcher-bearers brought the dead and the wounded from the line of battle. At 1.20 the station was moved forwards from Igen to the Gishu road, north of the castle. Now the enemy retreated far backwards and our troops did not pursue them. At 4.20 the dressing-station was opened in the Christian Church in the eastern section of the castle, and all the dead and wounded were brought there from the station at Igen and from the quarters guarded by the cavalry.

Everything in the way of treatment to be given them was furnished at 7.47 p.m.

SURGEON-CAPTAIN YUNOSUKE SHOJI,
attached to the 1st Regiment of the Guard Infantry.

On the other hand, it was the Russian troops themselves that abused the Red Cross flag, as described in the report given by the army investing Port Arthur, which was published in the *Official Gazette* under date of November 7, 1904. It read as follows:

When we were confronting the enemy in a region northeast of Taisekido on July 19, this year, the enemy sent out twice, under the Red Cross flag, a number of men wearing the Red Cross badges upon their arms to bring in the dead and wounded. They came within our line of battle; but, honouring the badges upon their arms, our soldiers refrained from shooting them, and only commanded them to retreat. On 30th of the same month several Russian soldiers were found again entering our line of battle, wearing the Red Cross badges upon their arms and carrying muskets in their hands. This occurred in an engagement in the quarter northeast of Suishiei.

As it was a violation of the conditions of war, our troops captured them at once. Moreover, when those entering our line of battle with the Red Cross badges on their arms at the north of Suishiei on the same day were examined, they were found to have been of the military band attached to the Russian regiment, but commanded to wear the Red Cross badges temporarily and to enter within our line of battle as if to rescue the wounded.

Besides, there is no doubt, from their own testimony, that they had no warrant for wearing these badges.

Thus the Russians try to spy upon our movements under the pretence of bringing together the dead and the wounded, and our army is always subject to greater danger. Now, there is the customary practice of making a short truce during hostilities when either party wants to take in their dead and wounded, and our army will hereafter regard the above-described step taken against this custom as a case of the abuse of the Red Cross flag and badges. We shall not be responsible for respecting these inviolable badges. The Russians wearing the Red Cross badges upon their arms should be treated either as spies or as combatants, judging from their actions

By Order.

It was the Russian troops that abused the Japanese flag also in an engagement near Tehlisz, as attested by the following official report:

The War Office, June 17, 1904.

SIR:

According to a telegram sent by the Commander-in-Chief of the Japanese forces on the Liao-tung Peninsula, and received yesterday morning by the Imperial Headquarters, the Russian troops abused our national flag during the battle of 15th inst. near Tehlisz. A squad of our infantry actually witnessed the Russian soldiers proceeding with our national flags flying, and our Artillery suspended their fire at this sight. This treachery constitutes a grave offence against the customary laws of war, being a positive infraction of Art. XXIII. of the Appendix to The Hague Convention. With this note it is hoped that a strong protest will be lodged by Your Excellency against the Russian Government.

(Signed) SEIKI TERAUCHI,
Minister of War.

To His Excellency Baron Jutaro Komura,
Minister of Foreign Affairs.

Accordingly, on June 29, 1904, Baron Komura gave the instruction to Minister Takahira at Washington, saying that:

The Commander-in-Chief of the Japanese Forces on the Liao-tung Peninsula declares in his reports to the Imperial Headquarters that, during the battle of June 15th near Tehlisz, the Russian troops displayed the Japanese flag. The Japanese Artillery, seeing their national colours flying, suspended their fire. The entire incident was witnessed by a squad of Japanese infantry, and the essential facts of the case are, it is believed, beyond question. The act constitutes a grave offence against the customary laws of war, and is, moreover, in direct disre-

gard of Art. XXIII. of the regulations annexed to The Hague Convention of 1899, concerning the laws and customs of war, and the Japanese Government believe it to be their duty in the interests of humanity to exhaust every effort to put a stop to such offences. It will, accordingly, be requested that the Secretary of State will instruct the United States Ambassador at St. Petersburg to call the attention of the Russian Government to this abuse of the national flag of Japan.

But the Russian Government apparently gave no reply to this matter.

Moreover, the following statements appeared in the *Official Gazette* and may be cited here as indubitable instances of the Russian abuse of the Japanese flag:

Russian Abuse of the Japanese Flag.

Among the Russian official documents captured by our extreme Left Army during the Battle of Mukden was found a copy of a pamphlet issued by General Kuropatkin for distribution among his army, entitled "Japanese Tactics as known by Actual Experience." In this pamphlet there occurs a paragraph which reads substantially as follows: "In making an attack, each company or section of a Japanese Army deploys from one of its wings and becomes a bow-shaped group. In this formation the whole line advances simultaneously. In each interval between the sections of their infantry they hoist a white flag with a red spot in its centre, with the probable object of showing the position of each group and of avoiding the fire of their own artillery. On the occasion of the firing by the Japanese on the redoubt garrisoned by the 34th Seifsky Infantry Regiment, during the engagement of Oct. 1 (Oct. 14 in the New Calendar), the commander of the Regiment caused his troops to hoist a Japanese flag on Surusarenko Hill. The Japanese instantly stopped firing."

This naïve confession by General Kuropatkin of the abuse of the Japanese flag by his army is a significant commentary upon the Russian attitude with regard to the obligations of civilised warfare.

Russian Treachery.

Another instance of the Russian abuse of our flag occurred during the recent engagement near Liao-yang. At noon on the 25th of September, 1904, our troops were advancing on one of the enemy's forts, when firing suddenly ceased, and the Japanese flag was seen flying from the fort. This was, however, a ruse. Our force on approaching the fort, thinking that it had already fallen into our hands, was received by a severe fire, which almost annihilated one of our companies. Fortunately, however, reinforcements arrived, and the enemy was finally dislodged from his position.

V. *The False Accusation of a Russian Surgeon Being Treated Unjustly at Tashihkiang.*

The French Minister sent a note on this point to the Japanese Foreign Minister on December 2, 1904.

The following note, replying on this matter, was sent to the French Minister, after the non-existence of such facts was ascertained by the authorities of our War Office.

Department of War Office, January 20, 1905.

In reply to the letter of December 2nd of last year, sent to our Government at the request of the Russian Government, in the case of Surgeon Safronoff, attached to the Ninth Regiment of Tobolsk, and alleged to have been not only made prisoner at Tashihchiao and detained for more than two weeks by our Imperial troops, but also to have been treated violently or unjustly by our officers and men.

It proves to be untrue that our Imperial Army made prisoner one called Surgeon Safronoff, attached to the Ninth Regiment of Tobolsk, at Tashihchiao on July 20, last year. Although one called Surgeon Isaac Penbaig, attached to the Fourth Field Hospital, was detained with the others by the necessities of war at the time of our occupation of Tashihchiao on July 20th last year. At that time proper treatment was given by our troops to these prisoners, nothing unjust or violent being done to them. Moreover, the above-named surgeon and two other non-combatants were treated with civility, and at their discharge they were sent to Inkas, at their own request, on the 30th of the same month. They were entrusted to the American Consul there, to be convoyed to the Hopei station, when they were set entirely free. Thus it is altogether incongruous with the facts that they are alleged to have been detained above two weeks.

For this reason our Imperial Government can by no means admit what was alleged by the Russian Government to have been committed by our Imperial troops in violation of the Geneva Convention.

VI. *Slander on Japan's Treatment of Russian Killed and Wounded.*

It was a real surprise to the Japanese that slander came from various sources concerning its treatment of the enemy's wounded and sick, for it had been the universal conviction that no army ever more consistently trod the broad ways of humanity.

An Italian paper of June 15, 1904, had a slanderous article under the title, "The Cruelty of the Japanese Soldiers Towards

Russian Killed and Wounded," and other papers also published equally false articles, based upon information furnished by antagonists. Soon after, however, careful inquiries made by Japanese Headquarters exposed the prejudices of such ungrounded reports, and the light of truth dispelled what illusions they had caused, as may be seen from the following extract from a German paper:

(1) *Japanischer Protest gegen die russichen Beschuldigungen.*

Die japanische Gesandschaft in Wien veräffentlicht folgende Mitteilung: Nachdem es der japanishen Regierung zur Kenntnis gelangte, dasz in einem Teile der auswärtigen Presse aus Liaoyang datierte Berichte veröffentlicht wurden, wonach japansche Soldaten Grausamkeiten an russischen Verwundeten und Verstümmelungen an Toten verübt hätten, hielt sie es für ihre Pflicht, diese Anklagen an Ort und Stelle auf ihren Wert zu prüfen. Als Ergebnis dieser Untersuchung wurde der japanischen Regierung von Seite der Militärbehörde berichtet, dasz alle diese Meldungen jeder Grundlage entbehren. Die mit der Untersuchung betrauten Militärbehörden stellten fest, dasz nicht blosz keine Grausamkeiten verübt wurden, dasz vielmehr die Disziplin überall aufrechterhalten wurde, und dasz bei keinem einzigen japanischen Arme ekorps irgend welche Ausschreitung vorgekommen ist. Alle Divisions Kommandanten sind von der Haltung ihrer Truppen überaus befriedigt, da sie die von ihnen ausgegebenen Tagesbefehle, die feindlichen Soldaten von dem Augenblicke, da sie kampfunfähig werden, als Waffenbrüder zu behandeln, strengstens befolgen.

(2) Tokio, 4 Juli. (Offiziell.) Es befinden sich derzeit über 1000 Russen in japanischer Kriegsgefangenschaft, und alle diese Gefangenen sind ohne Ausnahme dankbar für die humane Behandlung, welche ihnen seitens unserer Behörden zu teil wird. Das in der Haager Konvention für Kriegsgefangene vorgesehene Informationsbureau wurde sofort bei Ausbruch der Feindseligkeiten aufgestellt, und alle die Kriegsgefangenen betreffenden Detailinformationen werden ebenso wie die auf den Schlachtfelden aufgefangenen oder von den in unseren Spitätern verstorbenen Verwundeten zurückgelassenen Gegenstände, welche das persönliche Eigentum der russichen Soldaten bildeten, regelmäszig den russischen Behörden übermittelt. Diese Tatsache steht in einem bemerkenswerten Gegensatze zu dem seitens der russischen Behörden beobachteten Vorgänge, welche aus eigener Initiative der japanischen Regierung noch niemals irgend eine Nachricht über die japanischen Kriegsgefangenen zugehen lieszen.

(3) *Behandlung russischer Verwundeter und Gefangener in Japan.*

Tokio, 4 Juli. (Offiziell.) Der Generalstabschef der zweiten Armee telegraphiert:

Mit Beziehung auf gewisse irrtümliche nachrichten, betreffend angebliche Ausschreitungen japanischer Soldaten, erscheint es angezeigt, darauf hinzuweisen, dasz am 12 Juni, an welchem Tage solche Ausschreitungen stattgefunden haben sollen, Zusammenstösze zwischen unserer Armee und dem Feinde nicht erfolgt sind, und dasz es ebenso wenig zu irgend welchen Scharmützeln zwischen Aufklärungs abteilungen gekommen ist. Obwohl sich die Russen am 15 Juni verschiedener Ausschreitungen gegen bei Fönghwangtschöng verwundete oder gefallene Japaner schuldig machten, ist auf japanischer Seite nichts dergleichen vorgefallen. Die in unsere Hände gefallenen verwundeten Russen geben ihrer Dankbarkeit Ausdruck für die aufmerksame Behandlung, welche ihnen zu teil wird. Die gefallenen Feinde werden aufgelesen und mit schuldiger Achtung begraben.

(4 *Japanische Meldung über russiche Grausamkeiten.*

Tokio, 4 Juli. (Offiziell.) Von dem Generalstabschef der zweiten Armee wird gemeldet.

Am 15, Juni wurde eine Rekognoszierungsabteilung, bestehend aus sechs Unteroffizieren und Soldaten, von ungefähr fünfzehn Russen bei Chengtsushan überfallen und getötet. Die Russen bohrten ihre Bajonette in Augen und Mund der Leichen, öffneten ihnen den Unterleib und hemächtigten sich des Inhalts ihrer Taschen.

Am 27, Juni wurde ein Gemeiner erster Klasse namens Kobayaschi vom 3. Kavallerie-Regment auf Posten an sinem Punkt ungefähr vier Kilometer nordöstelich von Hsunyocheng erschossen und fiel vom Pferde, worauf sich etwa 20 russische Kavalleristen um den Leichnam sammelten, den Unterleib mit dem Bajonette durchstachen und andere Akte der Grausamkeit verübten. Sie wurden von einem Detachement japanisher Kavallerie vertrieben. Der Leichnam wurde uns eingeliefert.

The following was contained in the *Novoye Vremiya* received on January 31st, 1904:

Information Furnished by a Russian Officer Concerning the Japanese Treatment of the Russian Wounded.

S. A. Z. Zalauraka, second captain, commander of the 4th company of the 36th Regiment of East Siberian Sharpshooters, who was seriously wounded at Tei-ri-ssu and was received in audience by the Emperor

and the Empress at St. Petersburg on his way to Cann for his health, made the following remark in his conversation:

"I cannot believe the so-called Japanese cruelty so frequently dealt with in the press, though individual instances may not be denied. Before one judges the Japanese conduct he should be careful not to ignore the circumstances in which the conduct occurred. To take an example, the battle of Tei-ri-ssu, where I was wounded, was a hard fight for our enemy, and their casualties were tremendous. The enemy made a sally at us as we were marching out triumphantly, and met a stubborn resistance from our wounded, who, though prostrate, fired at them with might and main. Under such circumstances it is hardly believable that any gallant European army would have acted less cruelly than our Asiatic Enemy. In fact, the best witness to the enemy's not having been guilty of any cruelty of the extreme sort may be found in the fact that our soldiers bear no rancour whatever against the enemy."

On being next asked about the Russian treatment of the enemy's wounded, the Captain added as follows:

"Our soldiers, generally speaking, are gentle and kind towards the enemy's wounded, though there may have been some individual cases when they acted otherwise."

Sect. II. Russian Breaches of the Rules of War.

In the preceding sections the author has mentioned the facts and disproved the false accusations made by the Russian Government against the actions of the Japanese Imperial troops. In this section it is the purpose to describe the cases of actual violence committed on the part of the Russians. It must be remembered, however, that the object is not to bring to light some illegal acts of the hostile nation, but to narrate the cruelties enacted which were too shocking to be overlooked.

I. *The Russians Firing at the Japanese Field Hospitals.*

The following are the official documents concerning this fact:[1]

The Japanese Minister to Acting Secretary of State Adee.

Legation of Japan, Washington, July 20, 1905.

SIR:

Under instructions from H. I. M. minister for foreign affairs, I have the honour to inform the United States Government, as one of the governments which signified adhesion to The Geneva Convention of 1864, of a case of the most flagrant violation of the said convention com-

[1] *Foreign Relations*, pp. 618–619.

mitted by the Imperial Russian troops in Manchuria, in wantonly attacking, on the 18th of May last, the defenceless and non-resisting personnel of a military field hospital of the Imperial Japanese army, which was at "Ee-chia-wo-pong," in the province of Feng-tien, and in wounding and killing the persons who are entitled to protection and respect by the belligerents.

The details of the incident are given in the annex as translated from the various reports received by the Imperial Government from their army in Manchuria.

Besides bringing the above to the notice of your government, I am further instructed to request your good offices in instructing the United States ambassador at St. Petersburg to call serious attention of the Russian Government to this grave violation of the stipulations of the Red Cross convention by their troops in Manchuria.

Accept, etc., (Signed) K. TAKAHIRA.

[Inclosure.]

RÉSUMÉ OF THE OFFICIAL REPORTS ON THE ATTACK OF THE JAPANESE MILITARY FIELD HOSPITAL AT "EE-CHIA-WO-PONG," IN THE PROVINCE OF FENG-TIEN, BY A BODY OF THE RUSSIAN CAVALRY, ON MAY 18, 1905.

About 10.40 a.m. of the 18th sound of rifle-fire was heard in the westerly direction of the hospital. Seeing the approach of danger, the superintendent of the hospital immediately ordered its withdrawal, and at about 11.10 a.m. four hospital waggons and the majority of the hospital corps sought refuge in the easterly direction. Surgeon Uyehara, superintendent of the hospital, together with Doctors Inouye and Fukuyama, military hospital nurses, and soldiers charged with the transportation of the hospital equipments, stores, and other materials, commenced retreat. Thereupon a body of the enemy's cavalry, about 100 strong, surrounded "Ee-chia-wo-pong" and fiercely fired upon the withdrawing party. The hospital superintendent and party, being pursued by the enemy, retreated towards the village in the easterly direction. The enemy having already approached within the distance of only 10 metres, the superintendent and Doctor Inouye, who were mounted, narrowly escaped, but Doctor Fukuyama and military hospital nurse Sakai fell victims of the pursuers.

Military hospital nurse Kobayashi, who escaped the calamity by hiding himself in a hollow in the ground found nearby and who personally witnessed the said incident, made the following statement concerning the attack of the Russian troops upon Doctor Fukuyama and military hospital nurse Sakai:

Doctor Fukuyama was overtaken by the enemy. Thereupon the doctor, as if he had made up his mind for the worst, sat down on the ground and pointed to his arm badge of neutrality. In spite of this the enemy cut at the doctor with his sword and felled him to the ground.

The military nurse Sakai, being likewise surrounded by the enemy, pointed to his arm badge of neutrality. Thereupon the enemy made gestures as if to indicate that they permitted him to proceed forward, and watching the moment of unguardedness on the part of the nurse, they gave a blow on the head with a sword and the victim fell down upon the ground. He saw these two men fall, but could not say whether they were dead or not. He saw, further, that several of the soldiers, charged with commissariat duty of the hospital corps, were attacked in the same way, but could not give detailed accounts.

According to the statements of the natives, the Russians cut off the head and upper limbs of Doctor Fukuyama and threw his body in a waggon and carried it away. The cap and the girdle cloth were found on the spot where the attack took place, the former being badly damaged on the top.

Summing up the general results of the attack, the enemy attacked our defenceless and non-resisting hospital corps, seized or burned the greater portion of the hospital equipment, stores, and other materials, and out of 6 officers and 45 men, severely wounded 2, killed 5 (bodies recovered, showing sword cut from the head), and made the fate of 41, including Doctor Fukuyama, unknown.

The enemy, while escorting our men to their headquarters, robbed them of money, watches, and other treasures, and took away their Red Cross arm badges.

The answer is as follows:

The Acting Secretary of State to the Japanese Minister.

Department of State, Washington, July 24, 1905.

SIR:

I have the honour to acknowledge the receipt of your note of the 20th instant, in which, under the instruction of your government, you request this government to bring to the attention of the Imperial Russian Government a violation of The Geneva Convention of 1864, alleged to have been committed by Russian cavalry on May 18 last.

Copies of your note and its inclosure have been forwarded to the American ambassador at St. Petersburg, and he has been instructed to transmit them to the Russian foreign office.

Accept, etc.,

(Signed) ALVEY A. ADEE.

Another instance of Russia's violation of International Law is told by a surgeon who served with the Second Army during the Nanshan engagement and who returned home on the 23rd May. He states that the Japanese field hospital was established on that occasion at a point more than 3000 metres distant from the position of the Japanese force, as it is provided

in International Law that such hospitals must be separated at least 2000 metres from the scene of operations. In spite of this, and the fact that a Red Cross flag was flying above the hospital, the Russians recklessly fired at the latter, to the great danger of the Japanese ambulance corps. Fearing that the flag could not be seen by the Russians it was hoisted still higher, only to become the centre of a more furious fire. It is to be sincerely hoped that the authorities will lose no time in lodging a protest with the Russian Government, through the proper channel against the repetition of such barbarous conduct on the part of the Russian army, which has so far made itself notorious in its violation of International Law.

General Oku's report is as follows:

During the Nanshan engagement of May 26, we established the First Field Hospital at Chukiatun and were receiving the wounded, when at 10 a.m. a Russian gunboat fired at the hospital from Dalny Bay. Thinking that the Red Cross flag was out of the enemy's sight, we hoisted it in a conspicuous place. The Russians then fired at it with increased vigour. One of the shots entered a sick ward and passed in front of an operation room, while several shots grazed the flag. We were compelled to remove the hospital with its inmates to Weikiatun.

II. *Russian Outrages.*

The following document was found among the Russian papers seized by the Japanese First Army during the battle of Mukden:

Order No. 3 of the First Brigade of the 31st Infantry Division of the Russian Army.

(Issued at Shui-lo-pa-tai Village, Feb. 9, 1905.)

In order to set up marks indicating the road leading from the first line of positions to the dressing station, each regiment shall prepare small white flags with the greatest expedition, their poles to be of such height as not to stand higher than 1½ *arshine* above the ground. The 122nd and 121st Regiments shall erect these flagpoles at various points between Huang-ti Village and Erh-tai-tzu Village, and between the latter place and Tien-Shui-pao Village, respectively.

Until the 11th instant, ordinary rations shall be provided besides the midday meal and a pound of beef for each man. In case of a forward movement, non-commissioned officers and privates shall each carry their knapsacks, a bag of hard biscuits, tea, sugar, a small pan, and a pair of warm boots. All other articles shall be left in the lodgings.

Each company shall carry at least 4 ladders not more than 3 *arshines* in length.

Each battalion in the reserve corps shall carry empty bags for making earth-bags, which will be necessary when a village shall have been occupied. These empty bags may also serve the purpose of deceiving the enemy by putting them on our winter caps.

The non-commissioned officers and men shall, beforehand, be instructed to the effect that in advancing, if they find *en route* any Japanese soldiers lying flat, especially those lying on the back, they shall not fail to kill them; for the Japanese are wont to assume the appearance of being wounded and to fire on our skirmishers after allowing them to pass by. Warning shall also be given in the sense that no faith is to be put in such cries as "Come on," "Hither," "Friend," etc. (especially on a dark night), for Japanese soldiers are so crafty as not only to make these utterances, but also sometimes to announce even the numbers of our companies.

In order to distinguish friends from foes, watchwords shall be used. Such watchwords shall contain one or two l's, for example. *lyulka*, for this soft sound being absent in the Japanese language, the enemy is unable to pronounce it.

The regiments shall each offer prayers to-morrow.

(Signed) COLONEL MULLER,
In charge of the First Brigade of the 31st Division of Infantry.
Inspected by Lieutenant —— ——,
Acting adjutant of the 122nd Regiment of Infantry.

On the 4th of July, 1905, the Japanese Imperial Government gave an instruction to the Japanese Minister at Washington, who complied therewith through the following letter:[1]

The Japanese Chargé to Acting Secretary of State Adee.[1]

Legation of Japan, Washington, July 29, 1905.

SIR:

I have the honour to inform you, under instructions, that during the battle of Mukden our First Army seized in the battle-field a copy of Order No. 3, issued at Shui-lo-tai village on February 9, 1905 (February 22), by Colonel Muller, in charge of the First Brigade of the Thirty-first Infantry Division of the Russian army, of which copies of the original Russian text and an English translation are herein enclosed.

[1] *Foreign Relations*, 1905, pp. 619–620.

The attention of the Imperial Government has been especially attracted to the passage of the above order that "the non-commissioned officers and men shall beforehand be instructed to the effect that, in advancing, if they find en route any Japanese soldiers lying flat, especially those lying on the back, they shall not fail to kill them," because they consider that such a measure is not only warranted by the necessities of war, but is in direct contravention of the spirit of Art. VI. of The Geneva Convention and Art. XXIII. of the "regulations respecting the laws and customs of war on land," annexed to The Hague Convention of 1899, which have been adopted by all the nations of the civilised world, with the object of mitigating the unnecessary horrors of war. Even admitting, as is stated in the order, that the Japanese are wont to assume the appearance of being wounded and to fire on the Russian skirmishers after allowing them to pass by, there is no ground whatever for justifying the said order, for, without resorting to such drastic and comprehensive measures, there are ways, authorised by the international usage of civilised warfare, of dealing with the alleged cases.

The Imperial Government, therefore, feel constrained again to ask the good offices of the United States in instructing their Ambassador at St. Petersburg to call the serious attention of the Imperial Russian Government to the grave infraction of International Convention by the commander of their troops in Manchuria.

The Washington Government referred it to the St. Petersburg Government, which at last gave a reply at the end of April, 1906. The following are the papers connected with the matter:

American Embassy, St. Petersburg, March 17, 1906.

SIR:

The Department's despatches dated July 24th and August 1st, 1905, respectively, enclosing papers from the Japanese Legation at Washington, bringing to the attention of the Russian Government certain violations of the Geneva Convention alleged to have been committed by members of the Russian Army, were at once referred to the Ministry for Foreign Affairs.

I am now in receipt of a note replying to both of the Japanese letters, and beg leave to enclose a copy of the ministerial note, dated March 1–14th, together with a copy of the enclosure transmitted therein and a translation of the same.

I have the honour to be, sir,

Your obedient servant,

G. VON L. MEYER.

To the Honourable Elihu Root,
Secretary of State, Washington, D. C.

Ministere des Affaires Etrangeres.
Premier Department, le 1–14 Mars, 1906. (No. 1133.)

MONSIEUR L'AMBASSADEUR:

En me referant aux notes de Votre Excellence en date du 4 août 1905, je m'empresse de vous transmettre une copie d'une communication de l'Etat Major-General renfermant des renseignements detailles au sujet des accusations portées par le Government Japonnais contre un detachement de cavalerie russe sous les ordres de Colonel Muller d'avoir Commis le 18 mai dernier une violation de la Convention de Geneve de 1864.

Veuillez agréer, Monsieur l'Ambassadeur, à l'assurance de ma haute consideration.

(Signé) OBOLENSKY.

Son Excellence Monsieur G. von L. Meyer,
Ambassadeur des Etats-Unis, etc.

Translation.

Copy of a Communication of the General Staff.

February 16, 1906.

With regard to the question of the violation of the rules of the Geneva Convention by a detachment of Adjutant-General Mistchenko and by Colonel Muller, Temporary Commander of the 1st Brigade of the 31st Infantry Division, communicated by the Minister of Foreign Affairs to the Minister of War, under date of August 12, 1905 (sub. No. 4468), the Chief of Administration of the General Staff communicates as follows:

(1) In accordance with the report of the Commander of the 4th Ural Cossack Regiment, it is seen that, on May 5, 1905, the advance guard of the 6th Company (hundredth) of the said regiment was fired upon from a village (name unknown); upon the approach of the main forces, a squadron of the enemy's cavalry galloped away from the village, the firing continued, and a military movement was observed; supposing that this was a forward movement, the Cossacks made an attack, and upon advancing they saw commissary waggons in the village; some of the armed men who accompanied the waggons defended themselves, others tried to escape; a large number were made prisoners and disarmed.

A number of the two-wheeled waggons tried to make their escape and were pursued; the Japanese attendants of the two-wheeled waggons defended themselves with their arms, wounding two Cossacks (Terentia Budarnikoff and Samuel Tianoukhin), and this caused the Cossacks to follow up the attack, during which they killed 4 Japanese and wounded two others.

In this affair a Japanese surgeon, who defended himself with his sword against the Cossacks, was taken prisoner. This surgeon, by orders from Adjutant-General Mistchenko, was released on May 7th, together with 15 hospital nurses, at the village of Tsinsiantao, in order

to attend to 49 wounded Japanese belonging to the Reserve Infantry Regiment, the hospital detachment having been equipped with ample supplies.

During the skirmish the sign of the Red Cross was not displayed; that the waggons belonged to the Hospital Staff was discovered only after they were captured.

Besides the hospital waggons there were also commissary depots in the same village, which were destroyed.

According to the report of Adjutant-General Mistchenko, among the prisoners made during the skirmish of May 5th there were 7 men belonging to the Infantry Division.

Every possible attention was afforded the prisoners and wounded during their transportation to Divisional Headquarters in small carts; before sending the prisoners to the Staff of the Army they were questioned as to any claims or declarations they had to make; these claims amounted to 25 Rubles, which sum was paid to them.

In view of the fact that the raid of the Cavalry Detachment of Adjutant-General Mistchenko was undertaken especially with a view to the destruction of all kinds of military stores belonging to the enemy, the action of the 4th Ural Cossack Regiment against the enemy's waggons, which displayed no signs of belonging to the Hospital Service, and besides the attendants of which replied to the attack with rifle-fire, must be recognised as absolutely correct, and no violation of the Regulations of the Geneva Convention occurred.

(2) It has been impossible to ascertain on what basis the order contained in the above-named letter was issued by the temporary Commander of the 1st Brigade of the 31st Infantry Division, inasmuch as the Headquarters papers of the Brigade and of the Staff of the 31st Infantry Division were lost during the battle of Mukden, and Major-General Muller does not recollect issuing any such orders or any reason for so doing.

Correct copy: (Signature illegible).

Many like instances could be enumerated, but their shocking character forbids.[1]

III. *The Use of Dumdum Bullets.*

The actual evidences that the Russian Army used some special bullets were left on the fields after the battle of June 12th, 1904, near Fou-huang-cheng; the battle of August 2nd, near Ching-chia-tzu, and the battle of October 2nd, near Liao-yang.

[1] See the *Official Gazette*, Tokyo, July 7 and 15, 1904, "The Reports of General Oku."

The following are the details published in the papers:

Press despatches from Tsaohokow dated the 17th inst., state that among the spoils of war seized by the right wing of the First Army at Sz'taokeu on June 28, were a number of ammunition belts containing "dumdum" bullets for quick-firing revolvers. These shots will be shortly brought to Tokyo and submitted to the experts for examination. If they prove to be "dumdum" bullets, the use of which has been prohibited by the Hague Conference, Japan will file a protest with Russia through a third power. A "dumdum" bullet inflicts a most dangerous wound, and this description of shot is only used for hunting purposes.

The same despatches continue to report innumerable atrocities committed by the Russians. To quote one or two instances: A private, named Keiichi Tanaka, received three sword cuts at Likiaputsz' and fainted from loss of blood. The Russians then tied a rope round his neck and dragged him along for some distance. They then playfully butchered him, four or five Russians participating in this inhuman business. Another private, named Toramatsu Hirakawa, was wounded at Likiaputsz, and fell to the ground. The Russians then dragged him by a rope tied to his thigh, but getting tired of this performance, they cut open an artery and caused their prisoner to bleed to death.

In view of the recent Russian accusation of cruelties committed by Japanese, our officers at the front are collecting material for establishing their charges against the Russians.

One of our soldiers at the front discovered a "dumdum" bullet in Western Tsuhoyen, north of Tiehling, on April 21st, 1905. The Commander of the division to which the soldier belongs, in sending the bullet to the General Staff Office, states that, owing to the fact that the cartridge case does not contain any powder and that no bullet similar to the one in question, nor rifle to discharge the same, can be discovered in the neighbourhood, it is difficult to say that the enemy used it. But, on the other hand, judging from the fact that two Russian corpses were discovered in the neighbourhood of Tsuhoyen, it is probable that the enemy left the bullet there on the occasion of their retreat.

IV. *The Wearing of Chinese Costumes by the Russian Army—an Example of Russian Stratagem.*

The following official statement was issued Oct. 19th, 1904:

In a report from the Commander-in-Chief of the Manchurian Armies the fact is mentioned that on the 4th of October, 1904, a body of infantry belonging to the 3rd Russian Regiment of Sharpshooters, all wearing Chinese costumes, attacked our forces on the road to Mukden. It is also reported that of late Russian soldiers clad in Chinese costumes have often approached our forces, and even attempted surprises. Moreover, according to different reports recently received, the Russian

Army is said to be purchasing, even now, an enormous number of Chinese costumes.

It is generally admitted that combatants who are not attired in proper uniform can be punished as offenders of the rules of war, and should they take part in the actual fighting without wearing their proper uniform, not only is their action a violation of international usages, as well as an unlawful act contrary to the meaning of Art. XXIII. of the Convention concerning the Laws and Customs of War on Land, but it will prove a source of great calamity to the innocent Chinese, who will thus be exposed to danger, owing to the impossibility of distinguishing from a distance between Russian soldiers and the real Chinese.

Consequently the Imperial Government has deemed it necessary to call the attention of the Russian Government to such unlawful action on the part of the Russian Army, and has instructed H. I. J. M. Minister at Washington to take, through the United States Ambassador at St. Petersburg, the necessary steps to that effect.

The answer to this is as follows:

Mr. Hay to Mr. Takahira.

Department of State, Washington, D. C., October 18th, 1904.

SIR:

I have the honour to acknowledge the receipt of your note of the 15th instant, in which you state that the Commander-in-Chief of the Japanese Armies in Manchuria has reported to the Imperial Government that on the 4th of October, when the Russian infantry belonging to the Third Sharpshooter Regiment attacked the Japanese troops on the Mukden road, they were dressed in Chinese costume; that Russian troops have been found of late on several occasions under a similar disguise, when they approached the positions of the Japanese army and attempted night attacks; and that Russians are reported to be actually engaged in the purchase of a large quantity of Chinese clothes.

You solicit the good offices of this Government to bring the above statements to the attention of the Russian Government, to the end that the necessary measures may be taken by it to put an end to such irregular practices as soon as possible.

In reply I have the honour to say that I have sent a copy of your note to the American Chargé d'Affaires at St. Petersburg, with appropriate instructions.

(Signed) JOHN HAY.

The Japanese Government also took measures with the Chinese Government against this practice.

A despatch to the *Jiji*, dated October 22nd, 1904, says that Mr. Uchida, the Japanese Minister at Peking, having recently

notified the Chinese Government concerning the disguise of the Russian troops in Chinese clothing and the consequent danger of the natives being fired on by the Japanese army, the Peking authorities on Friday lodged a protest with M. Lessar, Russian Minister, in this connection, and also sent similar instructions to Mr. Hu, Chinese Minister to Russia.

While this was an absorbing problem, the author had the opportunity, as a member of the Committee of Investigation, Foreign Department, of fully discussing with Messrs. Terao and Nakamura the legal aspects of the matter.

Art. I. of The First and Second Hague Conventions contains the following four conditions for army, militia, and volunteers:

1. Having at their head a person responsible for his subordinates;
2. Having a fixed, distinctive badge, recognisable at a distance;
3. Carrying arms openly; and
4. Conforming in their operations to the laws and usages of war.

Now the Russian Second Sharpshooters fulfilled all these conditions, for they had a commander, and their Chinese uniform made them recognisable at a distance; the other two being equally adhered to. In the present case, however, Art. I. is wholly inapplicable, for the article is no more than an enumeration of conditions requisite for making of persons combatants, while the Russian soldiers under consideration were already combatants.

In Art. XXIV. of The Hague Convention it is stated that stratagems of war and the employment of the means necessary to secure information as to the enemy and the theatre of military operations are lawful.

E. Rollins's commentary on the above question is this:

"La rédaction de L'article 24 (14 ancien) a été critiquée.

"Pris à la lettre, cet article pourrait en effet être interprété en ce cens que *toute ruse de guerre et tout moyen nécessaire pour se procurer des renseignements sur l'ennemi et sur le terrain* devraient *ipso facto* être considérés comme licites. Il s'entend que telle n'est

nullement la portée de cette disposition, qui a uniquement pour objet de dire que les ruses de guerre et les moyens de se renseigner ne sont pas défendus comme tels. Mais ils cesseraient d'être licites en cas de contravention à une règle imperative admise d'autre part."

It is clear that the use of stratagem is restricted by some other rules, and we cannot use stratagem inconsistent with any other rule of war. The Russians' disguise in Chinese costume must needs cause a certain amount of trouble to the Chinese, and one is justified in deeming it an illegal stratagem.

A word is necessary here on a weak point found in Art. XXIII. of The Hague Convention, in the lines: "To make unlawful use of flags of truce, or the national flag, or military insignia, or *uniform of the enemy*, or the distinctive signs of the Geneva Convention." The words "*uniform of the enemy*" afford an outlet for such a case as that resorted to by the Russians, and should be complemented by the addition of something like "*and of a neutral nationality*"; for in such a case as this, the damage extends even to a neutral nation, as well as to one of the belligerents.

The author quotes here the opinion of Professor Holland:[1]

The Russian Use of Chinese Clothing.

To the Editor of the *Times*.

SIR: If Russian troops have actually attacked while disguised in Chinese costume, they have certainly violated the laws of war. It may, however, be worth while to point out that the case is not covered, as might be inferred from the telegram forwarded to you from Tokyo on Wednesday last, by the text of Art. XXIII. (t) of the Reglement annexed to The Hague Convention, "on the Laws and Customs of War on Land," this article merely prohibits "making improper use of a flag of truce, of the national flag or the military distinguishing marks and the uniform of the enemy, as well as of the distinguishing signs of the Geneva Convention."

Art. I. of the Reglement is more nearly in point, insisting, as it does, that even bodies not belonging to the regular army, which, it is assumed, would be in uniform (except in the case of a hasty rising to resist invasion), shall, in order to be treated as "lawful belligerents," satisfy the following requirements, viz.:

(1) That of being commanded by a person responsible for his subordinates;

[1] *London Times*, 22nd Oct. 1904.

(2) That of having a distinctive mark, recognisable at a distance;

(3) That of carrying their arms openly; and

(4) That of conducting their operations in accordance with the laws and customs of war.

The fact that, under special circumstances, as in the Boer war, marks in the nature of uniform have not been insisted upon, has, of course, no bearing upon the complaint now made by the Japanese Government.

All signatories of The Hague Convention are bound to issue to their troops instructions in conformity with the Reglement annexed to it. The only countries which, so far as I am aware, have as yet fulfilled their obligations in this respect are Italy, which has circulated the French text of the Reglement without comment; Russia, which has prepared a little pamphlet of 16 pages for the use of its armies in the Far East, and Great Britain, which has issued a handbook, containing explanatory and supplementary matter, besides the text of the relevant diplomatic acts.

VI. *Violation of International Law by the Sakhalin Army.*

As the natural consequence of the people of Sakhalin Island of the Maritime Province being enlisted by the Russian Government, numerous cases of acts violating International Law appeared in that army.

On this subject the Japanese Imperial Government carried on most exact investigations, out of which a report was made, and it was presented to the Government of the United States for their perusal. The report and the correspondences relative to the matter is here published.[1]

Mr. Takahira to Mr. Root.

Legation of Japan, Washington, October 27th, 1905.

SIR:

Under instructions from my Government, I have the honour to enclose herewith a copy of an English translation of a report received by the Imperial Government from the commander of the Japanese Army in the island of Sakhalin, accompanied by a supplementary statement of the superintendent of the Field Hospital attached to the said army, regarding violations of the laws and customs of war by the Russian army during an engagement which recently took place in the island.

I beg leave to add that, in the belief of the Imperial Government,

[1] *Foreign Relations of the United States*, 1905, pp. 621–622.

the practices of the Russian army, as stated in the above-mentioned report, constitute grave offences against the stipulation of the Geneva and Hague Conventions, of which Russia is one of the signatory Powers; and it is with this belief in view that the Imperial Government desires to bring the above to the notice of the United States Government and invite their consideration thereof, so that the matter may be made a subject of international discussion at such an opportunity as may present in the future.

Accept, Mr. Secretary, the renewed assurances of my highest consideration.

(Signed) K. TAKAHIRA.

Honourable Elihu Root,
Secretary of State.
(Translation.)

Report of the Commander-in-Chief of the Sakhalin Army, Regarding Violations by the Russian Army of the Laws and Customs of War.

A considerable portion of Russian inhabitants of the Island of Sakhalin consists of criminal exiles. It was from among these undesirable inhabitants that the Russian Government recruited, during last year, their volunteers for the defence of the island. As a result thereof there were, since the time our (Japanese) army landed on the island, numerous instances of disregard and violation of the laws and customs of war on the part of Russians, not only as individual combatants, but even as an organised army. Their conduct was also against the stipulations of The Geneva and Hague Conventions. The military operations of our army were, on that account, greatly interrupted, and it encountered no small difficulty in carrying out the rules of war. Of this irregular and unlawful conduct of the Russian troops certain conspicuous cases are especially pointed out in the following report, in order to invite the attention of the world and also to furnish references for future discussion of the matter.

1. *Use of Dumdum Bullets.*

On July 10th, 1905, while engaged in the occupation of Vladimirovkaour, our army captured from the enemy's cavalry rifles supplied with dumdum bullets. It is also clearly proved by the report of the superintendent of our field hospital (Annex No. 1) that, on the 11th and 12th of the same month, during the engagement which took place near Dalineye, and on the 22nd, when scouts of both armies met near Adradonye, the enemy used dumdum bullets.

Besides, a Japanese by the name of Sumita Kametaro, who was found a prisoner among the Russians when the commander of the enemy surrendered on the 16th of July, witnessed three or four Russians carrying rifles to use dumdum bullets, while a considerable number of dumdum bullets were found among the ammunition captured by our army after the engagement near Dalineye.

2. *Abuse or Improper Use of Red Cross Flag and Badge.*

The Russian troops seemed to regard the Red Cross emblem as a necessary fighting instrument to prevent danger to themselves, and abuse they made thereof reached an inconceivable extent.

Our troops, while invading the headquarters of the enemy, found on many occasions that the latter were displaying a number of Red Cross flags on the roofs of houses which were not employed for the care of the sick or wounded. In one instance, when our army attacked Rykoff, the enemy hoisted a Red Cross flag on the top of an isolated house, about 3000 metres west of the place, where troops were sheltered under its cover, and, setting machine guns close by the house, fired at our troops. Similar treacherous conduct was repeated in Novomihay-loskoe, Onor, and other places.

Besides, there were a number of Russian soldiers who abused the Red Cross arm badge. On July 10th, when our army occupied Vladimirovka, we found that an excessively large number of persons were attached to the 18th field hospital of the Russian army there. As it was suspected that volunteers and other combatants were using the Red Cross arm badge to escape danger, an investigation was made, and it was discovered that they were regular combatants who were carrying Red Cross arm badges. There is no doubt that in the Russian army the use of the Red Cross arm badge was allowed for the combatants, which fact was also proved by the confessions of Russian soldiers captured by our army. It is also true that, in more than one instance, Russian troops in their retreat left behind them a number of combatants wearing the Red Cross arm badges who offered an armed resistance to the advance of our army.

3. *Irregular Combatants without Uniforms.*

In spite of a fixed emblem being provided for, the Russian volunteers, a part of the enemy's force in the island of Sakhalin, had no emblem whatever, and there was no means of distinguishing them from the ordinary people of the place. For instance, on July 10th, when the occupation of Vladimirovka was effected, a company of the enemy, consisting of more than one hundred soldiers without uniforms, assaulted our advance company. Our company, however, with the assistance of another company, succeeded in taking a large portion of the enemy's soldiers as prisoners. On investigation it was discovered that a great number of volunteers, together with ordinary people who took up arms, were among them. Again, on July 19th, a scouting party led by Lieutenant Watanabe (Cavalry) was suddenly surrounded at a village called Romanoskoe by Russian volunteers wearing the same clothes as ordinary people, and received considerable injury.

Evidently some of the enemy's volunteers were not furnished with any uniform from the outset, while others took off, in their retreat, their emblems and concealed themselves among ordinary people. Owing

to such wanton disregard of uniforms and emblems on the part of the enemy, which made it impossible to distinguish combatants from ordinary people, our army had great difficulty in conducting its operations. Our army, however, with conscientious regard for the laws of humanity, spared no effort to prevent injuries.

4. *Release of Criminal Prisoners and their Violent Conduct.*

On our army having landed on the island of Sakhalin, the Russian army released the criminal prisoners kept at Alexandrovsk and several other places. These released prisoners entered upon a course of lawlessness, and as a result the city of Alexandrovsk suffered greatly. When our army occupied the city, as the looting was still rampant there, we organised a guard and put the city under its strict surveillance. In spite of this fact, the Russian army circulated the scandalous rumour that the violent disturbances of the city were caused by our army. But the fact that the conduct of these released prisoners was extremely threatening is indisputable, as admitted even by Russian officials and people at Rykoff and other places, where, on account of occupation by our army, they escaped injury from released prisoners. It is evident, therefore, that the Russian army purposely released the prisoners and attempted to put the blame of their wanton conduct on our army.

5. *Inhuman Insults Inflicted upon the Dead and Wounded.*

On the morning of July 27th our cavalry scouts were surrounded by Russian troops at a place south of Rykoff, and our commanding officer, Lieutenant Watanabe, and five others were killed. From the fact that on their dead bodies there were found more than ten rifle, cutting, and stabbing wounds, and that, particularly in the rifle wounds, there was powder gas, it is beyond doubt that Russian soldiers must have either savagely massacred the wounded or inflicted barbarous insults on the dead. Such conduct is not only against the laws and customs of war, but is a most wanton disregard of the laws of humanity.

6. *Exhumation of the Buried.*

In an engagement of August 2nd, near Lake Tonnaicha, Araya Katsusaburo, a soldier of the second grade, belonging to the 5th company of our infantry regiment, was killed. Our army buried the body in the wood nearby and set a post over the grave. On August 10th, when our army came back to the same place, after attacking the enemy's forces thereabouts, it was suspected the grave of the buried had been opened. Subsequently the soldier's seal and pocketbook, which had been buried with the corpse, were discovered in a box containing the private effects of one of the commanders of the enemy's forces. Thus it was confirmed that the grave of our soldier, who died an honourable death on the field of battle, had been opened by the enemy and the dead had been robbed.

Annex.

The report prepared by Nakamine Naojiro, Superintendent of the Japanese Field Hospital, on August 24th, is as follows:

General Account of the Rifle Wounds Inflicted by Dumdum Bullets.

The fact that there were several kinds of rifle bullets used by the enemy during the engagements in the southern part of Sakhalin is clearly proved by the bullets left by the enemy or captured by our army. Particularly the use of dumdum bullets is a matter requiring special attention, as the wounds inflicted by them are far more injurious and tormenting than those by modern coated bullets.

The number of the wounded received at Dalineye on July 12th by a detached force of our field hospital was seventy-three.

Of these ten died on the spot, while four others died after being received in the hospital, thus making a death rate of 19 per cent.

During this engagement the average distance of our army from the enemy's line ranged between 100 and 300 metres. The fact that the rate of blind or non-penetrating wounds was comparatively high for rifle wounds inflicted at such a short distance shows that the bullets used by the enemy were not modern coated bullets. Dumdum bullets, while their penetrating force is not great, have a very high destructive power because of the nature of the wounds they inflict.

The wound caused by dumdum bullets is marked by its extended exit, while its entrance does not show much marked injury. Even in the case of a perforated wound in a soft part, the diameter of the exit reached more than four centimetres, and the skin and the sinews were lacerated, while in some cases of fracture or bone injuries, fragments of bone scattered around into the tissues, leaving no trace of the original condition of the bones. The reason the bullet in question causes such terrific injuries is because, in hitting a hard substance like the shaft of a bone, its explosive force is effectively put into action, thereby causing the disintegration of the melting lead bullet, which fact is to be seen from the fragments of lead which crept into the spongy structure of the bones. Thus the wounds, particularly those received in the face, are so terrific that they are extremely repulsive in appearance. To show how exceedingly violent is the destructive power of the dumdum bullet, a few instances are cited:

1. The combined case of perforated bullet wound on the face and on the ankle joint of the right leg, and the total loss of the left upper arm.

Kurihara Matazo, Sergeant, Infantry, Reserved Corps.

On July 22nd the above named was wounded by bullets while he was proceeding, at a distance of about 100 metres from the enemy's front, on a scouting mission in a place north of Adonidnae in Southern Sakhalin.

The perforated bullet wound on his face left an inlet of about the size of the point of an index finger close by the right side of the nose, while the exit left a marked lacerated wound, with considerable destruction of the bone and soft part; that is to say, the upper lip, where it comes into contact with the nose, was cut athwart up to the left corner of the mouth, thus showing valvular shape, while the roof of the mouth and the bottom of the nose were totally destroyed, thereby exposing the entire nasal passage up to the throat; and, further, the left antrum was crushed, leaving on the left cheek a big, irregularly edged, lacerated wound, with loss of tissues, and the lower jaw was broken lengthwise about the median line. Further, a part of the left lower jaw was also crushed, and while the fragments of bone from these destroyed parts were mostly scattered off, leaving no trace, a number of small sharp pieces were stuck into the lacerated wound, thus practically destroying the masticatory and vocal organs, so that the wounded could take only liquid food by means of a rubber tube.

The face of the wounded was thus so badly scarred and deformed that one could hardly look at it without a feeling of horror.

The second and third wounds need no particular description.

The wounded man, however, improved favourably, and he came to be able to talk intelligibly.

2. The combined case of perforated bullet wound on the face and the abrasion of the little finger.

Tajiro Ihei, Soldier, 2nd Grade, Infantry.

The above named was wounded on July 12th by a rifle bullet, at a distance of about 100 metres from the enemy's front, while he was engaged in attacking the enemy in the neighbourhood of Dalineye, Southern Sakhalin.

The perforated bullet wound on his face left a remarkably large lacerated injury. Although the inlet was not quite recognisable, from the condition of the wound, as well as the statements of patient, it is believed that the bullet came from the right side. The wound destroyed almost the entire lower jaw, and some of the fragments of bone were scattered into the bottom of the wound, while others, with periosteum, were found floating in the wound. The soft part of the lower jaw and the part from the chin to the angle of the former were entirely torn off. The upper jaw bone was also partly destroyed, while the frænum of the tongue was torn and a part of the under side of the tongue was exposed. On the edge of the tongue there were several mutilated wounds which caused inaction of the tongue and entirely disabled the masticatory and vocal organs, so that the wounded could not well take even liquid food. The patient died on the 8th day after receiving the wound, from exhaustion.

The Secretary of State to the Japanese Minister.[1]

November 6, 1905.

SIR:

I have the honour to acknowledge the receipt of your note of the 27th ultimo, enclosing a copy of the English translation of a report received by the Japanese Government from the Commander of the Japanese Army in the Island of Sakhalin, accompanied by a supplementary statement of the superintendent of the field hospital attached to said army respecting instances of the disregard and violation of the laws and customs of war by the Russian Army during engagements which recently took place on that island.

The Department has taken note of your statement that, in the belief of the Japanese Government, the conduct and the practice of the Russian army, as stated in the above-mentioned report, constitute grave offences against the stipulations of The Geneva and Hague Conventions, and that it is with this belief in view that the Japanese Government desires to bring the above to the notice of the Government of the United States, and to invite its consideration thereof, so that the matter may be made a subject of international discussion at such an opportunity as may present itself in the future.

Accept, Sir, the renewed assurance of my highest consideration.

ELIHU ROOT.

Mr. Kogoro Takahira, etc.

[1] *Foreign Relations of the United States*, 1905, p. 623.

CHAPTER V.

SPY.

Sect. I. Spy.

As to the spy, The First Hague Convention regulates as follows: [1]

ART. XXIX. An individual cannot be considered a spy unless, acting clandestinely or under false pretences, he obtains, or seeks to obtain, information in the zone of a belligerent's operations, with intent to communicate it to the opposite party. Military persons, therefore, who, not being in disguise, have penetrated into the zone of operations of the enemy's army, with a view to obtain information, are not to be considered as spies. In the same manner, military persons or civilians charged with the conveyance of despatches to their own army or to that of the enemy, and executing their mission openly, are not to be considered as spies. To this class belong, also, persons who are sent in balloons to transmit despatches, and, in general, to keep up communications between separated parts of an army or territory.

ART. XXX. A spy taken in the act cannot be punished without a preliminary trial.

ART. XXXI. A spy who, having rejoined the army to which he is attached, is subsequently captured by the enemy, shall be treated as a prisoner of war, and shall incur no liability for his previous acts of espionage.

Very few cases concerning the spy in his proper sense occurred during the late war. Most of the cases were those where Chinese or Koreans obtained or sought to obtain information in the zone of the Japanese military operations, with the intention to communicate it to the Russians. It seems to be, however, just and reasonable to distinguish between one case where the Russians acted as spies for their own army and one other case where Chinese or Koreans did the same. The former did it in the spirit of patriotism for their own country, while the latter did it to advance their self-interest. So Art. XXXI.,

[1] See also Arts. XXIX., XXX., XXXI., of The Second *Hague Convention Regarding the Laws and Customs of Land Warfare*, 1907.

above mentioned, is to be applied to a Russian, but it cannot be applied to a Korean or Chinese, and should not be exempted from a previous act of espionage. Cases happening during the late war were as follows:

I. *The Case of Kasimil Miaczynski.*

An Austrian subject, named Kasimil Miaczynski, coming to Shanghai, China, in the first part of Nov., 1904, had received 500 silver dollars from Major-General Dessino, of the Russian Army, under a contract with that officer to act as a spy for the Russian Army.

After that he went to Mr. Odagiri, Japanese Consul-General of Shanghai, and stated to him that, although he had made a contract with Major-General Dessino to act as a spy for the Russian Army, yet he would rather perform a similar service for the Japanese Army, as he was a socialist. The Consul-General replied that he had nothing to propose. He then went to Chefoo, where he made the same proposal to K. Mizuno, Japanese Consul there, who gave him the same reply as M. Odagiri had given. Afterwards he proceeded to Ying-kow through Tientsin, where he was arrested by a Japanese gendarme as a suspicious person and forwarded to Military headquarters at Liao-yang, and then to the court-martial. There, after due trial, he was sentenced to death as a Russian spy.

The sentence of the case is as follows:

Kasimil Miaczynski.

The accused, having received some 500 dollars from a Russian General, Dessino, at Shanghai in the first part of Nov., 1904, made a contract to act as a spy for the Russian Army. In order to attain this purpose he made a false statement that he had a desire to become a spy for the Japanese Army, as he was a Pole and a socialist. He entered Ying-kow within the zone of the Japanese military operations, and then proceeded to the line where the headquarters of the Japanese Army were situated. This is the clear fact shown by his personal statement and the documents provided by the military commissioners in the case. Therefore he was adjudged guilty of espionage and was sentenced to death.

31st December, 37th of Meiji.

Court Martial of Liao-yang Garrison.

Notwithstanding the above decision, the court did not execute it at once, but forwarded the offender to Yokohama, where he was imprisoned.

The spy was then released by the Grace of the Japanese Emperor after the restoration of peace.

II. *Chinese Spies.*

A. *The Case of Chen, the Magistrate of Liao-yang, and Wang, the Ex-Magistrate of Hai-cheng.*

These two Chinese were arrested by a Japanese gendarme and imprisoned under sufficient proof that they, in sending their men to the front, had obtained information about the arrangement of the Japanese First Army, and communicated it to the Russian Army at Mukden. (Report of 20th Feb., 1905, by the Manchurian Army.) Regarding this case the Chinese Government sent an official letter to Mr. K. Uchida, Japanese Minister at Peking, requesting the release of the two Chinese out of respect for the Chinese neutrality. Mr. Na-tung was then despatched to the minister for the same purpose.

On Feb. 22nd the Japanese Government gave the following answer:

"The persons under consideration should be punished according to Japanese Martial Law, no matter whether they were Chinese, or subjects of other countries, because their acts were against the Martial Law to be enforced in the field."

In pursuance of this decision (according to the report of Manchurian Army of 23rd Feb. and 5th day of March), Chen was sentenced to death, but execution was postponed. Yet it was necessary to keep him imprisoned, for he knew all about the conditions and arrangement of the Japanese Army.

The Chinese government still persisted, and requested that Wang be delivered to Yuan, the Governor, on condition that they would punish him severely. After negotiations, the Chinese Government dismissed him from its post at Liao-yang, and put him in jail for a certain time.

B. *The Case of the President of Bureau of Communication at Mukden and Fifteen Other Officers.*

These men were deemed guilty of espionage, and were confined on March 22nd, 1905, but upon special favour they were released on the following day.

C. *The Case of the Magistrate of Kang-ping Prefectory.*

On 11th June, 1905, Mu, the magistrate of Kang-ping, was arrested for alleged spying. On 26th of the same month and on the 3rd of July eight others, including Yin, the sub-magistrate of Kang-ping, Chao, the secretary, and Kiang, the clerk, suffered the same fate. After the trial the secretary and clerk were released immediately, but the sub-magistrate was committed to prison and Mu executed, for he communicated to the Russians information about the activities and conditions of the Japanese Army. The Chinese Government made a protest that officers, civil or military, of a neutral state should have the privilege of being tried by their own government and under the laws of their own country, no matter what their acts had been; that a belligerent country had no right to dispose of the matter at random, and that in this case of Chinese officers violating the law of neutrality the Chinese Government ought to have been notified, and Japan's failure to so notify the Chinese Government and her arbitrary punishment of Chinese subjects must be considered as an infringement upon the rights of a neutral state, and that it was a violation of International Law.

The author of this work could not but doubt what the Chinese Government did mean by the so-called International Law. The most advanced principle of International Law recognises the right of a belligerent state to punish a spy in the field. Still the Japanese Government, taking a very cautious step, directed the Minister of War to make inquiry. On the 26th of Aug., 1905, he replied thus:

I have the honour of acknowledging receipt of your esteemed favour, referring to the fact that Mu was sentenced to death and a few Chinese

were imprisoned by our military officers in Manchuria. In this matter I wrote a letter to the Commander-in-Chief there, ordering him to make inquiry. He gave the following answer:

"Lately, when a certain number of Russian Cavalry attacked the right wing of our army and disturbed the lines by which the provisions were carried to our soldiers, those Chinese, Mu and others, guided the Russians so that they could reach the rear of our army, and thus cause great damage to us. They also, taking advantage of their positions and conditions, communicated to the Russian army our positions in the zone of operations. According to International Law, it is evident that a belligerent state has a right to punish persons who adhered to the enemy and gave them aid and comfort by acting as spies for them. It matters not whether they are military persons of a neutral state or not."

So we consider the step taken by Japan in this case of Mu and others just and reasonable, and she would be justified in taking the same step whenever a like case presents itself.

Yours very truly,

(Signed) THE MINISTER OF WAR.

This is the clear and concise answer to this case and coincident with the principles of International Law. The Japanese Government replied in this manner to the Chinese Government. In response, the Chinese Government contended that officers of a neutral state, even in the field, must be protected by a belligerent state, and not be subjected to Martial Law. In case of their acting as spies or endeavouring to prevent the activities of a belligerent army the belligerent has a right only to arrest and confine the offenders and not to kill them. The author thinks that if the Chinese Government would persist in this principle it would be concluded that the Chinese Government should be responsible for any act by their officers, and any government would hesitate to assume any such great responsibility. On the whole, there are two errors in the statement of the Chinese Government: One of fact, that they failed to recognise that both protection and benefit were conferred upon Chinese subjects by the Japanese Government; the other, of a law, that the reasonable step taken by the Japanese Government against the case of espionage was contested without any definite knowledge of International Law.

D. *A Chinese Spy Using Doves.*

On board the *Han-yei Maru* there was a Chinese who acted as a spy for the Russian Army by using doves to accomplish his purpose. The following is the report:

Chinese crew and passengers of *Han-yei Maru* were sent out from Port Arthur on March 31st by a junk. With these Chinese there came one Chinese named Yung, who landed at Huang-Chen-tao. This man had three doves with him and he seemed to have been instructed by Makaroff to report through the characteristics of these doves when the Japanese fleet was sighted. He acted clandestinely, and obtained information about the Japanese Navy, but upon entering Chefoo, a neutral zone, the Japanese Government requested the Governor there to take proper action in accordance with the law of neutrality.

E. *Case of Chang.*

Chang-ku-san, a Chinese spy for the Russians, was sentenced to death. The decision runs thus:

It is evident that he gave great aid to the Russians, not only assisting in the construction of their fortifications under Russian employment, but also by collecting military information by which the operation of the Japanese Army was greatly affected. Therefore he deserves the death penalty.

However, since the prisoner has escaped, his entire estate should be confiscated.

(Signed) MILITARY ADMINISTRATOR.

Sect. II. Violation of Regulations Concerning the Protection of Military Secrets.

There were many persons of third states who during the Russo-Japanese war were staying in Japan, and who were punished by the Japanese authorities for investigating Japanese military secrets and revealing them to foreign countries. They were called spies, but they were not spies in the sense in which that word is used in The Hague Convention or International Law. Neither were they in disguise, nor were staying in the zone of operations. The reasons that they were punished by Japanese authorities were that their revelation violated the Japanese regulation concerning her military secrets.

There were two illustrative cases, the Bougouin case[1] and the Collins case. Although these were not the cases on International Law, the latter is here mentioned to prove that the necessity of Japan in superintending the foreigners who came to the zone of operation or to Japan was urgent in order to keep the military secrets.

The Collins Case.

In the Yokohama Chiho Saibansho, on Tuesday, judgment was delivered in the criminal case against H. B. Collins.

H. B. Collins, aged 40 years, British subject, residing at the Hotel de Paris, No. 179, Yamashitacho, Yokohama, no occupation.

Judgment is delivered by this Court as follows in the case in which the above-named person is charged with having divulged military secrets.

Formal Adjudication.

The accused is sentenced to eleven years' confinement with hard labour. The things taken will be returned to their respective owners.

Reasons.

The accused was born in Hongkong and has lived at Yokohama since he was an infant. He had formerly been engaged in the newspaper business, and some eight or nine years ago left Japan and went to China. He resided at Ryojunko (Port Arthur) for about three years, till about March of 1904, during which time he married a certain Russian woman. About June of the same year he was, while at Tientsin, requested by Ogorodnikof, a Russian Colonel residing there, to proceed to Japan to watch and report on the military secrets of this country. Complying with the request, he got from the Colonel $1000 as expenses and a letter addressed to Major-General Dessino of Russia. In the beginning of July he went over to Shanghai and saw Dessino, from whose notebook he took a copy of two kinds of cipher codes to be used in communicating military secrets. One of the codes represented Roman letters to be used in writing letters, and the other a list of proper nouns, representing names of articles or things, to be used in transmitting telegrams. About the 18th of the same month he came to Yokohama with these codes and put up at the Hotel de Paris, No. 179, Yamashitacho, of this city. Since then he has been exclusively engaged in detecting Japanese military secrets and matters belonging to them, such as the steps to be taken in transporting troops to a certain place for a certain period of time, from a certain date, their destination, kind of troops and plans of the War Office relating to their despatch. He then wrote a letter embodying these facts in cipher. The

[1] The judgment in English is mentioned in the *Japan Times*, July 14, 1905.

letter was dated October 24th, 1904, and addressed on the envelope to Dessino, but it was enclosed in a letter of request to Mondon in Shanghai, and posted from Yokohama on the 29th of the same month. It happened, however, that the letter was seized at Nagasaki by a military inspector. The offence, therefore, is not at all of a light nature. Of the facts above mentioned, all of them, with the exception of the fact that he had made an effort to discover Japanese military secrets and that he collected matters belonging to Japanese military secrets knowing that they were so, are clear enough, since they have been admitted by the accused. The other facts may be gathered from the statements in Nos. 1 to 4 of preliminary examination, Exhibit No. 17 (as to writings in cipher referring to cipher codes in preliminary examinations Nos. 2 and 3); that the accused wrote a letter giving in cipher the steps to be taken in transporting troops to a certain place for a certain period of time from a certain date, their destination, kind and number of troops, and plans of the War Office relating to the despatch of the troops, and that the letter was dated December 24th, 1904, and addressed on the envelope to Dessino and enclosed in a letter of request to Mondon in Shanghai, and from preliminary examination, Exhibit No. 16, which is a letter from Mishimura Senoi, military inspector at Nagasaki, dated the 4th November last, stating that the accused's letter was inspected on the 18th of the same month and considered to have related to the divulging of military secrets, and that therefore it was sent back; that the accused's letter was seized by a military inspector at Nagasaki. That the matters in the communication above stated are Japanese military secrets is evident from No. 2 of preliminary examination Exhibit No. 18, which is a letter from Terauchi Seiki, Minister of War, stating that the matters mentioned in the enclosed letter dated the 24th October, 1904, are, considering the present situation, military matters, required to be kept strictly secret not only at the time of communication, but at the present time. Indeed, not only is it clear from this, but even if these matters themselves are considered with ordinary common sense at this time of the Japan-Russian war, it can be clearly recognised that they are military secrets.

It goes without saying, then, that the accused, knowing that they were Japanese military secrets, collected them and despatched a letter giving mention of these matters. The accused stated that, taking advantage of a request made by a Russian military officer to detect Japanese military secrets, he did no more than attempt to get money by communicating unfounded facts, and that he never made efforts to discover military secrets, and also that he did not know whether the matters which were communicated were military secrets or not, as he mentioned only unfounded facts. However, according to the record of the first preliminary examination of Sekimoto Torajiro, witness, it appeared that about the 19th or 20th of July he received an order from the Chief of Police to watch the movements of the accused. The witness, therefore, approached the accused, and, when an interview was held on the 11th of September, he was told by the accused that he (the

accused) was selected at Tientsin and had come to Japan, that as he was to receive a monthly remittance of some 2000 yen he could not make a report of any matter which was a mere rumour, and that therefore it would be well to have even one or two facts if they were true. On the 16th of the same month, when the witness saw him, the accused said that he wanted more news. The witness asked him what kind of matters he wanted, and he said that he wanted information about the organisation of the First, Second, Third, and Takushan (Taikosan) Armies, and gave him a chit (No. 1 of Procurator's Exhibit). The accused then asked the witness where he would keep the chit, as it was an important paper. The witness replied that he would put it in his haramaki, and did so in his presence, and the accused seems to have felt easy. (In Preliminary Examination, Exhibit No. 5, which is a pocketbook taken from the accused, there is a mention, under date of September 16th, of the fact that he gave Sekimoto a general outline of his scheme. This corresponds to Sekimoto's evidence under review.) The witness also stated that after the accused had given him this chit he began to place great confidence in him, and was diligently engaged in the detection of secrets. On the 19th of October the accused told witness that the former could not make any useless communication. The witness asked him what kind of matters he was going to communicate. The accused replied that as there would be no doubt that Kuropatkin would make a counter-attack on Liaoyang, he wanted to know, first, how many men were really killed and wounded on the Japanese side at the battles at Liaoyang and other places; secondly, whether the Japanese army would make a further attack or take winter quarters at Liaoyang or other places; thirdly, whether preparations for an attack on Vladivostock would be taken or not. The accused said that were these three points discovered and reported upon it would not be necessary for him to do any more work. He therefore asked the witness to investigate these points without fail. From the above statement of the witness it is not difficult to see how strenuously the accused engaged himself in finding out Japanese military secrets. Moreover, the accused's wife, a Russian woman, having left Japan, he had nobody to provide for. In despatching the accused, a Russian officer would not be so unwise as to give him a thousand dollars or allow him to take a copy of the ciphers without first ascertaining his determination and ability. Moreover, according to the admission made by the accused, the arrangement was that a remittance would be made to him from the officer according to the value of the communication. It is therefore easy to see that if the matters communicated by the accused were unfounded or well known, such matters being worthless the officer would not have sent him any compensation.

It may be considered, therefore, quite natural for the accused to have done all in his power to secure military secrets. It is certainly clear that the plea of the accused is groundless when to the above evidence the facts admitted by the accused are added, namely, the mode of communication explained above, the experience he has in newspaper

business, and the fact that he has had no occupation since he came to Yokohama.

At the same time there is not the least doubt that the offence of the accused is not of a light nature. It is proper, therefore, to recognise the facts of the offence above stated.

The act of the accused falls within the purview of Art. I. of the Law relating to the Protection of Military Secrets, which says that "persons detecting and collecting information, drawings, documents, or things which are military secrets, knowing that they are of such nature, shall be punished by major imprisonment." Therefore the accused should be punished accordingly. The Public Procurator argued that the act of the accused falls within the scope of Clause 1 of Art. CXXI. of the Criminal Code, but considering the spirit of legislation and the meaning of the provision of the Code, it is clear that it cannot be applicable to persons having no nationality in Japan, that is to say, to foreigners like the accused. Therefore the present case does not belong to the special jurisdiction of the Court of Cassation. Counsel for the accused stated that the same generosity with which the countrymen of the enemy have been treated should be extended towards the accused. The present case, however, does not refer to a question of International Law or a law of humanity. The Court, therefore, in punishing the accused according to the provisions of law, reports that the offence of the accused being of a most dangerous nature, there is no ground for the consideration of circumstances provided for in the Criminal Code. As to the things taken, Art. 202 of the Code of Criminal Procedure is applied and decision given as in the Formal Adjudication.

Public Procurator Miki Itaro attended the case.

Given at the First Criminal Division of the Yokohama District Court, this 24th day of January, the 38th year of Meiji (1905).

DANNO YOSHIYUKI, *Judge President.*
HASEGAWA KIKUTARO, *Judge.*
NAGOYA UMESABURO, *Judge.*
HANAGAMI FUKUZO, *Clerk of the Court.*

CHAPTER VI.

SIEGES AND BOMBARDMENTS.

Sect. I. Alleged Bombardment of Hospitals in Port Arthur.

On the 14th of December, during the partial armistice for the collection of the dead, General Stoessel sent the following letter in English to General Baron Nogi:

Port Arthur, 1–14 Dec., 1904.

SIR:

I have the honour to inform you that your artillery is firing at our hospitals, which are distinctly marked with the Red Cross flags. These flags must be visible from the position where your guns are placed, and therefore I beg you to prohibit it from the point of view of respect towards our warriors, who are honourably fighting with your army and do not merit extermination, being already wounded and lying in the hospitals under the Red Cross flag. Amongst them are also Japanese wounded warriors.

I avail myself of this opportunity of reassuring you of my sentiments of esteem.

(Signed) GENERAL STOESSEL,
Commander-in Chief of the Fortified District of Kwantung Province.

The next day General Balashoff came under a parlementaire flag to the outpost of the Japanese army to the south of Suishiying, on the road leading from Kinchow to Port Arthur. After presenting the following letter in English addressed to General Baron Nogi, he went away, leaving word that he would come again the next day at 1 p.m. to the same place:

Port Arthur, 2–15 December, 1904.

SIR:

I intrust the bearer of this, the chief in command of the Red Cross and Egermeister of His Imperial Majesty—Balashoff—to negotiate with

Your Excellency about the means of preventing danger to the hospitals during the bombardment of the town; but, naturally, at the same time, taking into consideration your right to secure the success of your military actions.

I have the honour to be, sir, your obedient servant,

(Signed) GENERAL STOESSEL,
Commander-in Chief of the Fortified District of Kwantung Province.

These two letters reached the headquarters of the Investing Army at the same time on the 15th of December, and a military council was immediately held. The answer of General Baron Nogi to General Stoessel's letter of the 14th of December was drawn up as follows:

Headquarters of the Besieging Army,
16th December, 1904.

SIR:

I have the honour of assuring Your Excellency that the Japanese Army has always respected humanity and international conventions, so that on no single instance since the beginning of the siege have our guns been ranged intentionally against buildings and vessels marked with the flag of the Red Cross. But the greater part of the interior of the fortress is invisible from the positions of our artillery, and as we all know, the shells do not always hit the points aimed at. Moreover, owing to the long duration of your brave defence, the deviation of our artillery increases from day to day, so that to my great regret I cannot be absolutely sure the shells do not occasionally strike at places entirely unexpected by us.

I avail myself of this opportunity of reassuring you of my sentiments of esteem.

(Signed) NOGI,
Commander-in-Chief of the Army Besieging Fort Arthur.

Major Suyejiro Saito, a staff officer, was chosen as delegate of the Japanese Army, and duly authorised to confer with General Balashoff. To him were attached two civil officers, Dr. Nago Ariga and Mr. Keijiro Kawadzu, who were to act as interpreters. The meeting took place at the appointed time and place, and the negotiations were carried on in English, Sub-Lieutenant Malchenko acting as interpreter on the Rus-

sian side. Eloquently describing the disaster caused by our shells falling on the hospitals two days before and killing or wounding even physicians and attendants, General Balashoff strove to make the Japanese delegate consent to making large sections of the old and the new towns in Port Arthur neutral, so that the Japanese artillery should not have the right to range their pieces against any of the buildings in these quarters. He assured the Japanese officers on his word of honour that no healthy soldiers should be lodged in any of the buildings situated therein, so that the Japanese Army would have no need of firing at these quarters. But Major Saito remained firm in his protestation that there were important military buildings in these very quarters, as, for example, the Central Provision Depôt, the flour mill, etc., so that the Japanese must reserve to themselves the right to decide which buildings to fire on. General Balashoff pretended that the Central Provision Depôt was now empty and that it was his intention to use the building as a hospital hereafter. As to the flour mill, he added, no further use would be made of the machinery, there being enough bread for six months to come. He even proposed to produce a document signed by General Stoessel himself, guaranteeing that none of the buildings within the quarters assigned should be used for military purposes. Major Saito, in the name of the Japanese Red Cross, firmly refused entering into any kind of contract with regard to the matter, and simply consented to look upon the proposal as a wish of the Russian Army. Thereupon General Balashoff asked whether the Japanese Army would receive a plan of Port Arthur showing the positions of the hospitals, in the event of it being brought to the Japanese outpost the next day but one. As the production of such a plan might be looked upon as the notification made according to Art. XXVII. of the Regulations respecting the Laws and Customs of War on Land, signed at the Hague in 1899, Major Saito did not refuse to accept it, but expressly stated that the Japanese Army would look on it merely as an expression of the wish of the Russian Army.

The negotiation was here ended, and a free conversation was begun, during which Major Saito handed to General Balashoff five large mail bags containing thousands of letters addressed to the officers and men in Port Arthur, which the Japanese Army had seized elsewhere. It was an act of kindness unheard of in the history of any siege, and the joy of the Russian general was intense. He said that as a return for this act of kindness on the part of the Japanese Army, he would permit the Japanese wounded soldiers in the Russian hospitals to write and send letters to their dear ones at home.

In the afternoon of the 18th of December General Balashoff again came to the outpost of the Japanese army and handed in to the Japanese officer the plan in question, together with an authorised copy of the orders issued by General Stoessel regarding hospitals, accompanied by an English translation, which runs as follows:

ORDER No. 926.

To the troops of Kwantung fortified district,
Dec. 4, 1904, Port Arthur.

All the flags of the Red Cross hospitals on different lazarets and bandage places, especially in the New Town, are to be removed, and instead the walls of those buildings shall be painted with a Red Cross on a white circle, the Red Cross flags to fly only on the hospitals, which ["and" instead of "which" in the Russian original] must be big.

The barracks of the 9th East Siberian Sharpshooter Regiment to be handed over to Egermeister Balashoff also for the use of hospitals. I believe that after the negotiations of Egermeister Balashoff with the representative of the Japanese Commander-in-Chief of the Troops, the Japanese will be more careful not to fire at our hospitals where the sick and wounded are lying.

ORDER No. 928.

I order the intendant of fortress: (1) To hand over all the empty store buildings adjacent to the hospital of Virgin Mary's Association of the Red Cross to General Balashoff for the organization of hospitals; (2) All work at the mill of Tifuntai is to be stopped.

(Signed) ADJUTANT-GENERAL STOESSEL,
Chief of the Kwantung Fortified District.

Correct with the original,

(Signed) COLONEL REIS.

After this there was a great decrease in the number of Red Cross flags, which had been quite irregular before, being sometimes more, sometimes less, but when the Japanese artillery fired at the barracks numbers of healthy soldiers were seen to hurriedly leave the latter and take shelter in the Red Cross Hospitals. The scene, distinctly visible from the observatory on the so-called 203-metre height ("High Mountain" of the Russians), was as comic as it was illustrative of the way in which the Russian soldiers regard the Red Cross flag.

Hereupon Major-General Ijichi, Chief of the Staff of the Investing Army, sent to Colonel Reis the following letter, dated 22nd December, 1904:

SIR:

I hereby acknowledge the receipt of the plan showing the positions of the hospitals, and of the copy signed by you of the Orders No. 926 and No. 928, sent by your army to our outpost on the afternoon of the 18th instant.

Availing myself of this opportunity, I have the honour of making clear to you, once for all, the position we take with regard to the question of placing the hospitals out of danger during the bombardments.

First: As stated in the letter of General Baron Nogi to His Excellency General Stoessel on the 16th instant, the Japanese Army will under no circumstances range its artillery intentionally against hospitals displaying the sign of the Red Cross, but as the buildings marked as hospitals on the plan are situated in the midst of, and close to, the buildings which we deem it necessary to bombard, we cannot be absolutely sure of our shells not accidentally striking them occasionally, owing to the deviation of our ordnance.

Secondly: As declared by the delegate of our army in the negotiations of the 16th instant, the fact of our receiving the plan does not imply our acceptance of the obligation of not firing intentionally at all the buildings marked as hospitals therein, but we reserve to ourselves the right of ranging our ordnance against such of them at least as come under the following cases:

(*a*) In case we know by information and direct observation that a particular building is not actually used as a hospital.

(*b*) In case we know by the same means that there is a violation of the Geneva Convention with regard to a particular building, in spite of its being actually used as a hospital.

I regard the correspondence concerning the present question as closed, and remain, sir, yours respectfully,

(Signed) IJICHI,
Chief of the Staff of the Army Besieging Port Arthur.

To Colonel Reis,
Chief of the Staff of the Fortified District of Kwantung Province.

The description below is believed to be most trustworthy and nearly impartial.

The Red Cross at Port Arthur.

[By EDWIN EMERSON, JR.]

General Stoessel's repeated protests on behalf of the Red Cross Hospitals at Port Arthur, which have had to suffer from the bombardment of the Japanese, at first blush appear to be well founded.

All the hospitals in Port Arthur, with the exception of two small field lazarettos which lie in exceptionally well-sheltered positions, have throughout suffered more or less from stray shells. As early as September, General Balashoff, the director of the Red Cross work in Port Arthur, voiced the same complaints to me against the alleged ruthlessness of the Japanese that he afterwards expressed in the formal manifesto brought to Chefoo by the *Rastoropny* and in the protest which he verbally expressed through Major Saitoof to General Nogi's staff during one of the white flag interviews in the middle of December.

General Balashoff, on the last day of September, pointed out to me the damage done by a Japanese shell to the roof of the largest Red Cross Hospital in Port Arthur. He also pointed out two large breaches knocked into the strong wall enclosing the hospital grounds by plunging projectiles that had dropped over the hospital. Before this time he had become so alarmed for the safety of the hospital patients that he had constructed a long tunnel for bomb-proof wards underground, but the arrangements there were necessarily so primitive and insalubrious that no patients had as yet been moved from the threatened hospital.

On that occasion General Balashoff, who impressed me as a highly excitable old gentleman, gave free vent to his indignation against the Japanese and what he termed "their ruthless savagery." As General Balashoff expressed himself both in French and German with equal fluency, addressing his remarks first in French to my French companion and afterwards in German to me, there was no mistaking his words. He pointed to the high gable of the roof, where flew a Red Cross flag measuring apparently six feet square, and exclaimed: "Can anybody miss seeing that flag?"

I ventured to suggest to him that a larger flag would be seen farther, and that two light-coloured chimneys on the roof might have the effect of obscuring the flag.

General Balashoff, however, was firmly convinced that the shots which struck the hospital had been deliberately aimed at it. He was strengthened in this opinion by the fact that several shots likewise had struck various parts of his Red Cross headquarters, nearby a former Chinese temple, on the roofs of which various Red Cross flags were prominently displayed. One of the shots, early in the autumn, had entered the stables where the ambulance horses were kept, killing several of them, so that all the horses had to be removed to bomb-proof shelters underground, where I saw them.

Standing on the roof on his improvised machine shop, General Balashoff pointed out to me no less than seven spots within the precincts of the Red Cross headquarters where Japanese projectiles or fragments of shells had done visible damage. I picked up one piece of shell for a souvenir.

General Balashoff, learning of our impending departure from Port Arthur, requested my French friend and myself to carry a formidable-looking document, in which he had embodied his grievances on behalf of the Russian Red Cross Society at Port Arthur against the Japanese. As we were not despatch bearers, and for other obvious reasons, we begged to be excused.

One day afterwards, when the junk in which we had left Port Arthur had been captured by the Japanese, and we ourselves had been taken to General Nogi's headquarters before Port Arthur, we met Majors Saito and Yamaoka of General Nogi's staff, the two officers who were selected to serve as parliamentaries during the white flag interviews that occurred before this time and afterwards.

In conversation with these officers we told them of the complaints concerning their artillery practice made by General Balashoff. Major Yamaoka denied emphatically that any of the Japanese gunners had ever knowingly fired in the direction of any Red Cross flag. He asked us to describe to him the exact locality of the Russian Red Cross Hospital in Port Arthur. Our description seemed to bewilder him. At last he called for a staff map, giving a complete plan of the city, with all its streets and prominent buildings. On this map I marked the location of the hospital and of the headquarters of the Red Cross Society with a red pencil.

"The building you have indicated," said Major Yamaoka, "is marked on our map as Alexeieff's Government House. If it can be seen from any of our positions, and if the Red Cross flag can be discerned on it, you may rest assured that the proper orders will be issued to the proper officers to prevent the repetition of such a mistake."

Major Yamaoka then told us of a number of instances where the Russians had failed to respect Japanese Red Cross flags, and other shocking instances of the maltreatment of Japanese wounded men by Russians. Similar stories about the Japanese had been told to us by the Russians.

I remembered, for instance, the indignation of Count von Lerche,

the chief of the first Red Cross train formerly running between Harbin and Port Arthur, whom I had met several months before at Mukden. This gentleman claimed that all the Russian Red Cross trains had been fired upon by the Japanese. In corroboration of this he showed me the bullet marks on the steel-plated sides of the passenger cars that made up the last train that ran out of Port Arthur. This train, he said, had carried a number of invalids and wounded men from the early naval bombardments, and injured survivors from the *Petropavlovsk* disaster. By his orders, he said, Red Cross flags had been hoisted over the cars that carried the sick men. Yet this had not hindered the Japanese forces in the field from lustily firing on the train. Several of the invalids in the upper berths had thus received additional injuries. More would have been wounded had they not crouched down on the floor of the cars, where they were sheltered by the steel sheathing outside. The train only escaped capture, added Count von Lerche, thanks to its plucky engine-driver, who made a run for it under a hail of Japanese bullets.

This was the famous train, I have reason to think, which is believed by many Japanese to have facilitated Admiral Alexeieff's ignominious flight from Port Arthur. As a matter of fact, the Viceroy's palatial train preceded this last train by more than twenty-four hours. One of the railway officers who served on it, when I asked him about the matter at Mukden, scoffed at the notion that a Red Cross flag had even been hoisted over it. There had not even been an occasion for such an expedient, he said, as they had not seen a sign of the enemy from one end of the run to the other.

The big new brick building of the Red Cross hospital at Port Arthur, which was originally intended for an administrative mansion, stands on a rather conspicuous eminence a short distance beyond the dwelling-houses of General Stoessel, Admiral Ukhtomsky, General Smyrnoff, and the quarters of the General Staff. The building is so large, and stands so exposed near the batteries mounted on the crest of Pehyushan, overlooking the old Chinese city, that it is no wonder that it is struck by stray shells. What most surprised me about it was that a number of workmen were still engaged in building operations on it. They were finishing a new wing, and others were laying out garden-plots on the grounds around it.

The hospital has three stories, with a capacity of some eight hundred beds. Its large halls and wide, stone stairways appeared to me admirably adapted for hospital purposes. The main ward is on the second floor. At the time when I was shown over it by General Balashoff there were not more than 160 patients in this ward. Long rows of beds stood empty. In a smaller ward were some Japanese patients, said to number 65 in all. Of these invalids I caught stray glimpses only through an open door. I asked General Balashoff whether I might see the Japanese invalids and speak with them, but he did not answer me, so I inferred that he did not wish to grant my request, for reasons best known to himself. I may have been mistaken in this, though, since

General Balashoff is very deaf and may not have heard the remark I shouted in his ear.

In other private wards were some of the more serious cases and the wounded officers, among whom were said to be two Japanese naval officers. I asked for the names of these officers, but the Russian surgeon who attended us said they were too hard to pronounce. Besides the officers there were several cases of sick women, one of whom had just given birth to a child. Most of the nurses also were women. Those with whom I spoke were of an uncommonly attractive and refined type. General Balashoff afterwards told me they were the wives of officers.

Besides the large Red Cross hospital there is a smaller one in a remote section of the old city, which was formerly a Chinese theatre. Another Red Cross hospital, which was said to be unfinished, is in the distant new city. Besides these there are the regular field hospitals of the Sanitary Corps of the army. These hospitals, some of which were established close to the firing lines, I was told, were always filled with emergency cases. Owing to their exposed positions it was impossible in many instances to remove their most serious cases to the base hospitals.

On the water front is the Marine Hospital, with a capacity of more than five hundred beds. The wounded and sick sailors are first also attended to in the hospital ships riding at anchor in the harbour. The largest of these is the great Red Cross floating hospital *Angora*, a three-funnelled white steamer having huge red crosses painted amidships and on its central smokestack, formerly the Russian passenger liner *Amur*.—*Kobe Chronicle.*

Sect. II. The Non-Combatants in Port Arthur.

In accordance with the august wish of H. M. the Emperor, who considered it to be against the cause of humanity to permit the non-combatants in Port Arthur any longer to participate in the dangers of war, at 8 o'clock on the morning of the 16th of August, Major Yamaoka of the staff was despatched as herald to the front of the besieged and announced the release of the non-combatants, together with the advice of surrender. Reports on the event are transcribed below.

By the order of H. M. the Emperor, Marshal Marquis Yamagata, Chief of the General Staff Office, has forwarded the following instructions to Marshal Marquis Oyama, Commander-in-Chief of the Army in Manchuria:

"H. M. the Generalissimo, prompted by the august wish for the cause of humanity, desires to spare the non-combatants in Port Arthur from the devastation by fire and sword.

"In response to the command of H. M. the Emperor, you are requested herewith to convey to Dalny those women, priests, merchants, and diplomatists and officers of neutral countries now staying in Port Arthur who desire to take refuge, and to hand them over to the commander of the harbour.

"Should you deem that the military operations will in no way be affected, you may take similar measures on behalf of the non-combatants in Port Arthur not enumerated above."

The Japanese Minister of Foreign Affairs sent the following note on this proposal to the French Minister at Tokyo:

Baron Komura to the French Minister.

Sent Aug. 13th, 1904.

MONSIEUR LE MINISTER:

His Imperial Majesty, actuated by motives of humanity, has graciously expressed His desire to see non-combatants at Port Arthur saved as much as possible from disastrous consequences of war. Accordingly, the Commander-in-Chief of His Majesty's Forces in Manchuria has been instructed to the effect that women, children, and clergymen, as well as diplomatic and military officers of neutral Powers at Port Arthur, who may desire to seek refuge, shall be escorted to Dalny, and that similar treatment shall be extended to other non-combatants, in so far as military exigencies permit. I add for your information that these refugees will be transported from Dalny to Nagasaki, whence they will be allowed to start for their respective homes.

(Signed) KOMURA.

The answer is as follows:

Légation de la République Française au Japon,
Tokyo, le 23 Août, 1904.

MONSIEUR LE BARON:

J'ai l'honneur d'accuser réception à Votre Excellence de sa lettre du, 12 de ce mois par laquelle il me fait connaître que S. U. l'Empereur, dans un but d'humanité, a daigné manifester le désir d'epargner aux non-combattants qui se trouvent à Port Arthur les risques du bombardement, et que des instructions ont été adressées au Commandant en Chef des forces japonaises eu Mandchourie pour que, le cas échéant, ils fussent conduits en toute sécurité à Dalny.

Je me suis empressé de transmettre cette décision à mon Gouvernement, en le priant de la porter à la connaissance du Gouvernement Russe, conformént au désir que m'a exprimé Votre Excellence. Veuillez-agréer, Monsieur le Baron, les assurances de ma très haute considération.

(Signé)

The conditions which the Japanese herald brought to the Russian Army were as follows:

1. Those who may take refuge, in response to the most generous august wish of H. M. the Emperor, should be women, children (under the age of 16 years), priests, diplomatists and officers of neutral nationalities at present inspecting the war.

2. The response should be delivered at a point 500 metres north of the Sui-si-ei, at 10 o'clock in the morning of the 17th of August.

3. Those who desire to take refuge should be at the above-mentioned spot at 2 o'clock p.m. on the 17th of August, under a white flag.

4. A corps of our infantry, bearing a white flag, should meet the refugees at the same spot.

5. One piece of baggage is permitted each person, under the condition that it shall be examined whenever necessary.

6. Refugees are forbidden keeping about them books, printed matter, letters, writings in letters or symbols, or any matters relating to the war.

7. Refugees shall be escorted as far as Dalny under full protection.

8. Response should be either in the affirmative or negative, no alteration being allowed in the conditions.

Next day Stoessel replied in the negative to both the Japanese invitation to surrender and the release of non-combatants. According to the laws of war, it is not forbidden to deny the surrender of non-combatants in a besieged fort. A German writer says:[1]

"Dasselbe gilt bezüglich anderer Personen, deren Abzug vom Humanitätsstandpuncte aus dringend wünschenswerth sein kann und deshalb auch wohl von dem Belagernden bewilligt worden ist, wie der Eiber, Greise, Kinder, Kranken, Verwundeten. Ob diese abziehen dürfen oder nicht, hängt wiederum nach Massgabe des priegerischen Bedürfnisses lediglich von dem Eremessen des Belagernden ab. Den humanitären Ansprüchen steht die Erwägung gegenüber, dass gerade das Verbleiben dieser Persone in dem belagerten Platze die Uebergabe desselben herbeiführen oder beschleunigen kann, namentlich durch Hungersnoth oder dadurch, dass der Festungscommandant durch diese Personen mittelbar oder unmittelbar zu Gunsten der Uebergabe beeinflusst wird. Die Entlassung kann den belagerungszweck sehr bedeutend hemmen, die Nöthigung der genannten Personen zum Verbleiben kann ihn beträchtlich fördern. Folglich kann die Gewährung des Abzugs als eine Unterstützung des Gegners vom Belagernden nicht verlangt werden, ganz abgesehen von den Störungen und Belastigungen, welche ihm aus der Entlassung erwachsen können.

[1] Holtzendorff, *Handbuch des Völkerrechts*, IV., Sect. 109, pp. 450–451.

"Es war daher ein Act besonderer Grossmuth, Wilde und Humanität, dass die Deutsche Heeresleitung im 1870–7er Kriege den Nicht-Combattanten, sobald es, ohne den Kriegszweck zu sehr zu schädigen, irgend anging, freien Abzug aus Strassburg gewahvte, wodurch aber an der Regel nichts geändert und der Satz nicht alterirt wird, dass die Entscheidung uber die Entlassung lediglich bei dem Belagernden steht.

"Verlassen die in Rede stehenden Personen, sei es aus freien Stücken, sei es auf Weisung des in dem belagerten Platze Commandirenden, den Platz ohne oder gar gegen den Willen des Belagernden, so kann der letztere natürlich alle Gewaltmittel, um Jene zuruckzutreiben, anwenden. Denn er braucht sich keine Schwächung seiner eigenen oder Sterkung der gegnerischen Position, noch ein Eindringen in seine Linien gefallen zu lassen, sondern ist zur Abwehr mit allen Mitteln berechtigt. Daraus folgt für den Commandanten der Festung die Verpflichtung, die in Rede stehenden Personen zu behalten, bezw. zurückzunehmen.

"Ebenso ist der Belagernde berechtigt, sich gegen Einzelne oder grössere Partien, welche die Festung verlassen, durch Gefangennahme (z. B. weil sie nach Aussen Nachricht geben könnten) zu sichern, wenn er sich damit begnügen will; weitere Kriegsrechtliche Massergeln, die nach Lage der Umstände begründet sein können, natürlich vorbehalten."

Nevertheless Japan proposed to take such a generous measure to soften the grimness of war. Why did Stoessel reject this proposal? Although one admires his never-tiring bravery which had no ear for anything like surrender, by no means can approval be given his refusal to release non-combatants as a breach of humanity.

Sect. III. The German Officers from Port Arthur.

The German military officers who chanced to be in Port Arthur were released according to the Emperor's wish. The following is the report:

Notice of Refuge to German Officers.

A despatch to the chief of the Headquarters Staff to the commander of the siege, dated the 16th of August, says:

"You are requested, through the German Minister, to take measures of duly forwarding the command directed by the Emperor of Germany to Commander Hopman and Lieutenant Girgenheim, two German officers in Port Arthur inspecting the war, of leaving Port Arthur, prompted by the most generous august will of H. M. the Generalissimo."

The response says:

"The request to forward the German Emperor's command to the persons addressed, Commander Hopman and Lieutenant Girgenheim, in Port Arthur, was duly fulfilled by a letter intrusted to the Russian herald who brought the response to our proposal of the release of non-combatants."

A few days later Admiral Togo, Commander-in-Chief of the Combined Fleet, reported, under date of the 20th inst., that on the 18th one of the Japanese torpedo boats stopped and examined a junk issuing from Port Arthur and found that the vessel carried on board Lieutenant-Commander Hopman, of the German Navy, who left that port in accordance with the command of the Kaiser, which had been transmitted to the officer by our army investing Port Arthur. The Lieutenant-Commander was taken to Kiaochow by the cruiser *Yayeyama*.

In this connection the Chefoo correspondent of the *Tokyo Asahi* states that the *Yayeyama* entered Kiaochow on the 20th at 3 p.m., the Captain and the officer second in command paying a visit to the German authorities there. After handing over the officer in question, the vessel weighed anchor at 6.10 p.m.

The fact of the *Yayeyama* having taken the German marine officer to Tsingtao appears to have created a very favourable impression, especially in maritime circles; and it being telegraphed from there that he was treated with great courtesy, the *Local Anzeiger* states that his being received on board the Japanese man-of-war and taken to Tsingtao is an attention for which Germany's thanks are due to the Japanese maritime authorities.

To the surprise of the Japanese, later on an article was met with in some of the newspapers at Chefoo and Shanghai to the effect that the Japanese Navy inspected or confiscated documents carried by Hopman while escorting him to Tsing-tao. Thereupon the Japanese Consul at Chefoo at once learned the facts about Hopman, so as to verify the fictitious disposition of the above article, adding that if it had no real basis he should declare his non-recognition about the said invention,

for the sake of German-Japanese friendship. The following is the report made by Commander Hopman:

Chefoo, den 31 August, 1904.

SEHR GEEHRTER HERR CONSUL:

Durch Herrn Consul Dr. Lenz erfahre ich soeben, dass einige Zeitungen die Nachricht gebracht haben, bei meiner Aufnahme durch die Schiffe der Japanische Flotte sein meine Papiere untersucht worden. Ich fühle mich verpflichtet, demgegenüber festzustellen, dass diese Nachricht *vollig erfunden und unwahr ist.* Keiner der Japanischen Offiziere, die ich an Bord verschiedener Ihrer Schiffe gesprochen habe, hat mich auch nur darnach gefragt, ob ich irgendwelche Papiere mit mir führte, geschweige denn deren Vorzeigung verlangt. Ebenso ist die ghunke, die mit meinem Gepäck nach Chefoo weitersegelte, während ich auf Befehl Sr. Excellenz des Vice-Admirals Togo durch den Kreuzer "Yayeyama" nach Tsingtao befördert wurde, nicht untersucht worden und mein Gepäck vollig unberührt in meine Hände gelangt.

Ich benutze die Gelegenheit um Ihnen, verehrter Herr Consul, nochmals meinen besten Dank für die Bemühungen auszusprechen, denen Sie sich zur Auffindung meines Gepäcks unterzogen haben, und gleichzeitig die Bitte auszusprechen, Sr. Excellenz Herrn Vice-Admiral Togo, Sr. Excellenz Herrn Vice-Admiral Kataoka, sowie den Commandante und Offizieren der Schiffe, die mir in der liebenswürdigsten Weise entgegen gekommenden sind, meinen verbindlichsten Dank übermitteln zu wollen.

Ich bin damit einverstanden, wenn Sie von diesem Briefe Gebrauch machen wollen, um den oben erwänten erfundenen Nachrichten öfftenlich entgegentreten.

Mit vorzüglicher Hochachtung
Ihr
ganz ergebenster,
(bezeichnet) CORVETTEN KAPITÄN HOPMAN,
vom Admiralstab der Kaiserlich Deutschen Marine.

In this way the true state of affairs was cleared up.

CHAPTER VII.

THE CAPITULATION.

The siege of Port Arthur, which lasted for 11 months, will be transmitted to posterity as a rare example of human bravery, and those who participated in that siege, both assailants and defenders, must remain immortal patterns of soldiers. We will, however, pass over all these memorable incidents that occurred in the course of the siege, and simply record the bare facts as one of the good instances of capitulation.

Sect. I. General Stoessel's Proposal to Surrender.

The following report from the commander of the Army investing Port Arthur, concerning the detail of Stoessel's proposal to surrender, was received at the Imperial Military Headquarters at 3 a.m. on the 2nd January:

About 5 p.m., on the 1st of January, the enemy's Parlementaire arrived at our first line south of Shui-shi-ying and handed the following message to one of our officers, from whom I received it at 9 a.m.:

No. 2545.

Port Arthur, December 31st, 1904.

To General Nogi, etc.

YOUR EXCELLENCY:

Judging from the general situation within the area of fighting, I think that further resistance is needless. In order, therefore, to avoid further loss of life, I ask you to negotiate for the terms of surrender. Should you accept my proposal, you will appoint a commissioner in order to discuss the terms and process of surrender, and fix a place of meeting between your commissioner and ours.

I avail myself of this opportunity to express my highest consideration.

(Signed) GENERAL STOESSEL.

I thereupon ordered our parlementaire to deliver the following reply to the enemy immediately after dawn to-day:

Headquarters of the Investing Army before Port Arthur,
Jan. 2, 1905.

To General Stoessel, etc.

YOUR EXCELLENCY:

I have the honour herewith to express my consent to the proposal of Your Excellency to hold negotiations on the terms and process of the surrender of the fortress. For this purpose, I have appointed Major-General Kosuke Ijichi, Chief of the Staff of the Investing Army before Port Arthur, commissioner, and attached to him a number of staff officers and civil officials. The party will meet the commissioner of your army at Shui-shi-ying at noon of January 2nd, 1905. The commissioners of both armies shall be fully authorised to sign the stipulations for the surrender of the fortress, the stipulations to come into force immediately after signing and without ratification. The credentials shall be signed by the highest commanders of both Armies and be exchanged.

I avail myself of this opportunity to express my highest respects to your excellency.

(Signed) GENERAL BARON NOGI.

By order of His Majesty the Emperor, Marshal Marquis Yamagata, Chief of the General Staff, despatched the following telegram to General Baron Nogi, Commander of the Investing Army before Port Arthur, on January 2nd, at 8 a.m.:

On submitting to H. M. the Emperor the proposal of General Stoessel to surrender, His Majesty was pleased to appreciate General Stoessel's arduous services for the sake of his fatherland, and desires that all the honours of war be accorded him.

I respectfully transmit the above to you.

(Signed) MARQUIS YAMAGATA,
Commander-in-Chief of the Manchurian Armies.

Thus the proposal of surrender by General Stoessel was accepted by the Japanese Army.

Sect. II. Stoessel Communicates with the Czar.

The following report from the Army investing Port Arthur was received at the Imperial Military Headquarters at 7 p.m. on January 4th:

At the conference held on the 2nd inst. regarding the capitulation, the Russian Commissioner requested our Commissioner to forward a message to the Czar with reference to the oath to be taken by the officers and civil functionaries in accordance with Art. VII. of the Terms of Capitulation, the commissioner stating that it was necessary to obtain the Czar's permission before such an oath could be taken. Upon approval of the Commander of the Army, our Commissioner transmitted the Russian General's telegram. A reply was subsequently received from the Czar, the message being addressed to the Communication station here. The Imperial message was at once forwarded to General Stoessel. The translation of the two messages is herewith submitted for the purpose of reference:

Stoessel's Telegram.

(Dated Military Communication Station, Choukiatun, Port Arthur.)

To His Majesty the Czar at St. Petersburg.

I have been forced to sign a capitulation concerning the surrender of Port Arthur. The officers and civil functionaries are allowed to wear arms and return to Russia, under obligation not to take part in the present war, but should they refuse to subscribe to the obligation, they are to remain prisoners of war. I apply to your Majesty for permission to grant the obligation demanded.

(Signed) GENERAL STOESSEL.

The Czar's Reply.

(Dated Mitchanovitch, South Russia, 5.30 p.m., Jan. 3, 1905.)

To General Stoessel, Aide-de-Camp to His Majesty.

I allow each officer by the privilege reserved to him either to return to Russia under obligation not to take part in the present war, or to share the destiny of the men. I thank you and the brave garrison for the brilliant defence.

(Signed) NICHOLAS.

Sect. III. The Terms of the Capitulation.

The following is the text of the capitulation agreement signed at 9.45 p.m. on the 2nd of January:

ART. I. The military and naval forces of Russia in the fortress and harbour of Port Arthur, as well as the volunteers and the officials, shall all become prisoners.

ART. II. The forts and fortifications of Port Arthur, the warships and other craft, including torpedo craft, the arms, the ammunition, the horses, all and every material for warlike use, shall be handed over as they are to the Japanese Army.

ART. III. When the above two articles are agreed to, the following steps shall be taken by way of guarantee, namely, by noon on the 3rd instant all garrisons shall be withdrawn from all fortifications and forts at I-tzu-shan, Hsiao-an-tzu-shan, Ta-an-tzu-shan, and all the highlands on the southeast of these, and the said fortifications and forts shall be handed over to the Japanese Army.

ART. IV. Should it be recognised that the Russian military or naval forces destroy or take any other steps to alter the condition of the things enumerated in Art. II. and actually existing at the time of the signature of this agreement, these negotiations shall be broken off and the Japanese Army will break off negotiation and resume freedom of action.

ART. V. The officers of the Russian military and naval forces of Port Arthur shall compile and hand to the Japanese army maps showing the arrangement of the defences, the positions of mines and torpedoes or other dangerous objects, as well as lists of the organisation of the naval and military forces in Port Arthur, nominal rolls of the military and naval officers, their ranks or grades, similar rolls relating to the warships, lists of the ships of all descriptions and their crews, and tables of the non-combatants, male and female, their nationalities and their occupations.

ART. VI. The arms (including those in the hands of the forces), the ammunition, and all material for war uses (except private property) shall be all left in their present positions. Rules relating to the handing over and receipt of these objects shall be arranged by commissioners from the Russian and the Japanese Armies.

ART. VII. The Japanese Army, as an honour to the brave defence made by the Russian Army, will allow the officers of the Russian military and naval forces and the officials attached to the said forces to retain their swords, together with all privately owned articles directly necessary for daily existence. Further, with regard to the said officers, officials, and volunteers, such of them as solemnly pledge themselves in writing not to bear arms again until the close of the present war, and not to perform any act of whatsoever kind detrimental to the interests of Japan, shall be permitted to return to their country, and one soldier shall be allowed to accompany each officer of the army or navy. These soldiers shall be required to give a similar pledge.

ART. VIII. The disarmed non-commissioned officers and men of the army and navy, as well as of the Volunteers, wearing their uniforms, carrying their tents and all privately owned necessaries of daily life, shall, under the command of their respective officers, assemble at places indicated by the Japanese Army. The details of this arrangement will be shown by the commissioners of the Japanese Army.

ART. IX. The officials of the sanitary and paymaster's departments

of the Russian military and naval forces in Port Arthur shall remain and continue to discharge their duties under the control of the Japanese sanitary and paymaster's departments so long as the Japanese Army deems it necessary for ministering and affording sustenance to the sick, the wounded, and the prisoners.

ART. X. Detailed regulations with reference to the management of the non-combatants, the administration of the town, the performance of financial duties, the transfer of documents relating to these matters, and with reference to the carrying out of the Agreement in other respects, shall be entered in an Appendix to this Agreement. Such Appendix shall have the force of the Agreement itself.

ART. XI. Each of the contracting parties shall receive one copy of this agreement, and it shall become operative from the time of its signature.

Supplement to the Capitulation.

ART. I. The following commissions shall be appointed by both Japanese and Russian Armies in order to carry out the provisions of the Capitulation:

1. Commission relating to Art. VI. of the Capitulation; Commission relating to the fortifications and forts and the arms and ammunition existing on land; Commission relating to the war-vessels and ordinary vessels; Commission relating to the war material in the parapets; and Commission relating to the removal of dangerous objects.
2. Commission relating to Art. VIII. of the Capitulation.
3. Commission relating to Art. IX. of the same.
4. Commission relating to Art. X. of the same.

ART. II. The above-mentioned Commissions shall meet at the entrance of the city on the main road of Port Arthur, on the Northern foot of Pai-yu-shan, at noon on January 3rd, and begin their respective work.

ART. III. The military and naval officers and men in the fortress of Port Arthur shall draw up, according to the arrangement to be made by the Japanese Army on receipt of the table of their organisation, and proceed towards the eastern extremity of Yo-hu-tsui, their head reaching there at 9 a.m. on January 5, and then receive orders from the Commission relating to Art. VIII. On this occasion the officers and officials attached to the Russian Army and Navy shall wear their swords, but the non-commissioned officers and men shall not bear arms. All the members of this force must bring with them provisions for one day.

ART. IV. The Russian officials who do not belong to the army or navy shall form themselves into groups, according to their respective offices, and follow the groups mentioned in the preceding Article. Those officials who have not been volunteers shall be released without parole.

ART. V. Such number of officers and men, or of persons of corresponding rank, as may be needed for the purpose of delivery, should

be left in each fortification, each fort, each building, each storehouse, each place where materials are stored, each warship, and each vessel. These individuals shall wear distinguishing badges supplied by the Japanese Army.

ART. VI. Such military or naval officers or volunteers or officials as may, after 9 a.m. on January 4th, continue to wear swords or refuse to repair to rendezvous assigned by the Japanese Army, shall be dealt with suitably by the Japanese Army.

ART. VII. The personal effects which the officers and officials belonging to the army or navy may carry, in virtue of Art. VII. of the Capitulation, may, when deemed necessary, be examined. The weight of such personal effects shall approximately correspond to that of the baggage allowed to the officers and officials of the Japanese Army.

ART. VIII. The military and naval hospitals and hospital ships in Port Arthur shall be first inspected by a Japanese Commission, and then placed under regulations, to be determined by the said Commission.

ART. IX. All private individuals shall be free to pursue their avocations in peace and tranquillity. Such of them as may wish to leave the place shall be free to take with them all their private property. In case the families of military and naval officers and officials desire to leave the place, the Japanese Army will afford them all possible facilities.

ART. X. In case it is considered necessary to order the departure of any private individuals residing within the fortress of Port Arthur, such individuals shall retire at a time and by roads designated by the Japanese Army.

ART. XI. The Russian Commission relating to Art. X. of the Capitulation shall acquaint the corresponding Japanese Commission as to the past and present condition of the administration and financial business, at the same time handing over all the documents relating thereto.

ART. XII. The Japanese prisoners of war in Port Arthur shall be handed over to the Japanese Commission designated in Art. I. of the present Capitulation at 3 p.m. on January 3rd.

Rules for the Carrying Out of the Capitulation.

The following is a translation of the rules drawn up by the Headquarters of the Imperial Army before Port Arthur for the guidance of our Commissioners in carrying out the provisions of the Capitulation:

ART. I. The following Commissions shall be appointed in order to carry out the Capitulation:

1. Commissions relating to Art. VI. of the Capitulation, viz.: Commission to accept the transfer of the fortifications and forts, arms and ammunition on land, military buildings, etc.; Commission to receive the warships and other vessels; Commission to receive the provisions and supplies; and Commission for removing dangerous objects.

2. Commission relating to Art. VIII. of the Capitulation (delivery of prisoners).

3. Commission relating to Art. IX. of the Capitulation (sanitation).
4. Commission relating to Art. X. of the Capitulation (municipal administration).

ART. II. The Commission to accept the transfer of the fortifications and forts, arms and ammunition on land, the military buildings, and the various war materials on land, shall be divided into two sections. One section shall attend to the execution of its duties in the district lying on the east of the Kinchow road, and the other section in the district to the west of the said road.

ART. III. The Chief of the Commission to receive the warships and other vessels shall detail the necessary number of officers and men for the execution of different duties, and carry out the transfer according to the procedure arranged with the corresponding Russian Commission.

ART. IV. The Commission for the receipt of the various provisions and supplies shall, in conference with the corresponding Russian Commission, take over the delivery by appropriate arrangements made according to the importance of these goods.

ART. V. The Commission for the removal of dangerous objects shall be divided into two sections, which shall, step by step, carry out their work in the districts east and west of the Kinchow road.

ART. VI. The Chief of the Commission for the reception of prisoners shall gather the prisoners at Chaokiatun, Yahutsun, Wenkiatun, Wankiatun, Chiutsaifang, Taliukiatun, Hsiakiatun, Kaokiatun, and Siaoliuliatun, as well as within the districts enclosed therein.

The Chief of the Commission shall administer the oath to the Russian naval and military officers and the officials ranking as officers.

ART. VII. The Chief of the Commission relating to sanitary matters shall, after consulting the corresponding Russian Commission, inspect the hospitals and hospital ships one by one, and take measures of relief, requisitioning the service of the Russian sanitary corps in carrying out those measures.

ART. VIII. The Commission relating to administrative affairs shall, after consulting the corresponding Russian Commission, receive the delivery of the papers regarding the status and calling of the Russian subjects and foreigners resident in the Port Arthur fortification district, papers, offices, etc., regarding the administration and accounts, and deal with the examination and seizure of other objects, maintenance of peace and order, protection of the churches, treatment of women and children, and all matters not military.

Sect. IV. The Transfer of the Forts.

The following telegram from the Investing Army before Port Arthur was received at the Imperial Military Headquarters on January 4 at 6 p.m.:

The forts and fortifications on I-tzu-shan, Ta-an-tzu-shan, Hsiao-an-tzu-shan, and the whole range of the height to the southeast, which were claimed as the guarantee of capitulation, have been duly handed over, the arrangements being completed without any hitch at 1.30 p.m. on the 3rd.

The following report from the Investing Army was received by the Imperial Military Headquarters at 7.05 a.m. on the 5th of January:

As last reported, the transfer of the objects mentioned in Art. II. of the Capitulation was effected on the 4th. The forts and fortifications were all delivered to our forces, while the delivery of other objects has been mostly finished. The prisoners of war are to assemble at the designated place to-day, but matters relating to them are so complicated that it is difficult to forward any definite report on the result of the investigations made in this connection. The list of the various reports so far obtained is as follows:

NUMBER OF PERSONS.

Army.

8 Generals.
57 Field Officers.
531 Captains and Lieutenants.
99 Army officials.
109 Surgeons.
13 Priests.
22,434 Non-commissioned Officers and men.
3,645 Non-combatants.

Navy.

100 Captains and Commanders.
200 Lieutenants (including several naval officers).
7 Priests.
4,500 Warrant officers and men.
500 Non-combatants.

Total, 32,207

In the above figures the Volunteers are included among the non-combatants.

The sick and wounded, who number over 16,000, are not included in the above total. There are also about 100 cavalry horses and 1870 cart horses.

General Stoessel, with seven other Russian Generals and four Admirals, gave their parole not to take further part in the war. They, with other officers, left Dalny for Nagasaki,

and were temporarily quartered at Inasa, before proceeding to Shanghai, where they were released.

Those officers who have refused to take the oath were sent to Moji and quartered in the neighbourhood of that town. All the non-commissioned officers and men were sent to Nishima, Hiroshima-ken, where they were quarantined and subsequently sent to different prison barracks.

Sect. V. The Russian Prisoners at Port Arthur.

The transfer of the prisoners of war was concluded at 4.30 p.m. on the 7th of January. Among the persons mentioned in the previous section the following were received as prisoners:

	Officers and other functionaries of corresponding rank.	Non-commissioned officers and men.
General Stoessel's Headquarters	2	39
Headquarters of the Governor of Kwantung Province	6	15
Engineer Company	11	269
Telegraph Corps	4	60
Railway Corps	1	155
Cavalry	4	177
Retvisan	22	446
Pobieda	22	510
Pallada	11	208
Peresviet	15	607
Poltava	16	311
Sevastopol	31	507
Bayan	15	259
Bobre	12	99
Stroteboi	4	52
Otovasny	6	124
Gyliak	5	72
Amur	5	173
Headquarters of the Naval Defence	3	3
Harbour Office	60	29
Marine Corps	59	2,531
Torpedo Corps	10	142
Judiciary	3	3
Field Post and Telegraph Office	33	23
Total	369	6,814
Grand total	878	23,491

Sect. VI. Booty of War in Port Arthur.

The following report from General Baron Nogi was received at the Imperial Military Headquarters on January 12th:

The delivery of fortifications and forts, warships and ordinary vessels, arms, and other objects was finished on the 10th. The descriptions and quantity of the principal objects are, roughly, as follows:

1. Permanent fortifications and forts	59
2. Arms, Ammunition, Waggons, etc.	
Guns:	
Large calibre	54
Medium calibre	149
Small calibre	343
Total	546
Shots and shells	82,670
Torpedoes	60
Explosives (pieces)	1,588
Gunpowder (kilo)	30,000
Rifles	35,252
Revolvers	579
Sabres	1,891
Rifle cartridges	2,266,800
Ammunition waggons	290
Commissariat waggons	606
Miscellaneous waggons	65
Harnesses for mounts	87
Harnesses for cart horses	2,096
3. Electric Lights	14
4. Telegraph apparatuses	15
Telephone apparatuses	135
Heliographs	3
5. Entrenchment tools	1,171
6. Horses	1,920
7. Warships and Ordinary vessels:	
Battleships (including the *Peresviet*, etc.)	4
(The battleship *Sevastopol* is excluded, as she is completely submerged.)	
Cruisers (the *Pallada* and another vessel)	2
Gunboats and destroyers	14
Steamers	10
Steam Launches	8
Miscellaneous vessels	12

Besides, there are a number of privately owned vessels. All the above ships are either destroyed or sunk.

In addition there are 35 steam launches available after repairs.

CHAPTER VIII.

ARMISTICES.

The author is glad to be able to give many instances of Armistices during the late war.

Sect. I. The Protocol of Armistices.

The following is the official English text of the protocol of armistice signed at Portsmouth on the 1st inst.:

The undersigned Plenipotentiaries of Japan and Russia, duly authorised to that effect by their Governments, have agreed upon the following terms of armistice between the belligerents, pending the coming into force of the Treaty of Peace:

1. A certain distance (zone of demarcation) shall be fixed between the fronts of the armies of the two powers in Manchuria, as well as in the region of the Tomamko.

2. The naval forces of one of the belligerents shall not bombard territory belonging to or occupied by the other.

3. Maritime captures will not be suspended by the armistice.

4. During the term of the armistice reinforcements shall not be despatched to the theatre of war. Those which are en route shall not be despatched to the north of Moukden on the part of Japan and to the south of Harbin on the part of Russia.

5. The commanders of the armies and fleets of the two Powers shall determine on common accord the conditions of the armistice in conformity with the provisions above enumerated.

6. The two Governments shall give orders to their commanders immediately after the signature of the Treaty of Peace in order to put this protocol into execution.

Portsmouth, September 1st, 1905.

(Signed) Jutaro Komura.
K. Takahira.
Serge Witte.
Rosen.

Sect. II. The Armistice of Manchuria.[1]

It is reported that on the 11th of Sept., 1905, a Russian parlementaire arrived at our outposts bearing the reply of Lieut.-General Linevitch to our notice regarding the armistice. In his reply the Russian Commander-in-Chief states that he has received a copy of the full text of the armistice treaty signed by the Japanese and Russian peace envoys and has appointed the Assistant Chief of his Staff to make the necessary arrangements in that connection. Upon receipt of this message, Marshal Oyama at once notified the Russians that he had selected the place for the negotiations, and the two commissions were to meet on the 13th for the first time. It is stated that Major-General Fukushima has been appointed our commissioner.

On Sept. 14th the following report from the Manchurian Army was received at the Imperial Military Headquarters:

The Commander-in-Chief of the Manchurian Army issued to-day (14th) an order relating to the armistice between the Japanese and Russian Armies in Manchuria, substantially as follows:

ORDER.

1. The Commissioners for concluding the terms of armistice between the Japanese and Russian armies in Manchuria met at Shahotsz (about 5 miles north of Changtu station) yesterday (the 13th) at 10 a.m., and signed the protocol of armistice at 7.20 p.m. the same day. The protocol consists of the following five articles:

ART. I. Hostilities shall be suspended throughout the whole of Manchuria.

ART. II. The ground between the first lines of the Japanese and Russian Armies, as shown in the map to be exchanged together with the protocol, shall be made a neutral zone.

ART. III. No person having any connection with either army shall be permitted to enter the neutral zone under any pretext whatever.

ART. IV. The road leading from Shahotsz' to Shwangmiaotsz' shall be used in common by both armies.

ART. V. This protocol shall become effective from noon on September 16th of the 38th year of Meiji (1905), or September 3rd according to the Russian calendar.

2. Each respective army shall enforce the terms of armistice according to this protocol by noon on the 16th inst. at the latest.

[1] *Japan Times*, September 13, 1904.

Sect. III. Armistices at Port Arthur.

Some strange records will be collected with regard to the question of armistices at Port Arthur. It is known that the Russian proposal for an armistice to bury their dead and collect their wounded after the battle at High Hill ended in failure. The Japanese consented without hesitation, but there was an error in the Russian application, and this error entailed a delay of a day, whereupon the Russians adopted the strange opinion that it was too late to do anything for the wounded, and that the bodies of the dead might be left as they were. When Major-General Nakamura's force penetrated the line of defences on the 26th of November and were recalled, they left many dead under the muzzles of the enemy's guns. There was, of course, a keen desire to recover the remains of these brave men, but no opportunity could be found; the siege operations were practically continuous. At last on the 11th of Dec., 1904, Colonel Watanabe, at the head of a party of stretcher-bearers, approached Sungshu-shan and asked permission to bury their dead. The Russians consented at once. But when sixty bodies had been buried, the officer in command on the enemy's side sent an aide-de-camp to say that he had no authority to grant an armistice without reference to General Stoessel, and that he suggested the sending of an application to that authority. The Japanese complied. Stoessel's reply was that he would agree to a five-hours' armistice, provided it was universal. Of course, General Nogi could not agree to suspend the siege operations at every quarter for the sake of recovering the bodies of the dead at one position. Stoessel must have known quite well that this condition was prohibitive, and it would thus appear that the amenities of warfare do not find favour in his eyes. What did succeed, however, was a proposal emanating from the Japanese that each side should furnish to the other a detailed list of the prisoners held. This was done on the 14th of Dec., 1904. The list handed in by the Russians contained 105 names, including the men of the navy as well as those of the army, and therefore doubtless included those captured in connection with

the blocking of operations.[1] But the Russians explained that the list was not complete, as some of the Japanese prisoners declined to give their names or to indicate the corps to which they belonged. The Russians then asked whether the Japanese would undertake to convey letters and telegraphic messages for them to their families in Russia. The Japanese agreed at once, and a number of letters were handed over. But the Japanese refused to receive postage dues, as well as 200 rubles which were offered in payment of telegrams, and finally the Russians handed over this money to the Japanese Red Cross Society.

Another touching incident was that the Russians produced a sword which, they said, had been worn by a Japanese officer who fought with conspicuous bravery in the attack on the 26th of November, and who fell within the lines. It was a Japanese blade, evidently executed by some celebrated smith of ancient times, and the Russians had the noble thought that the dead man's family would like to have this memento. Colonel Watanabe received the sword with all thankfulness and reverence.

Sect. IV. Naval Protocol of Armistice.

Early on the morning of the 18th inst., Rear-Admiral Shimamura, with the cruisers *Iwate* and *Niitaka* and the destroyers *Oboro* and *Akebono*, arrived off Lojinpho, Korea, and met there a squadron under Rear-Admiral Jessen, consisting of the *Rossia*, *Bogatyr*, and two destroyers. The meeting was then held between the respective commissioners, Rear-Admiral Shimamura, Commander Akiyama, and Lieutenant Yamamoto representing our side, and Rear-Admiral Jessen, Colonel Budberg, Chief of Staff of the Vladivostock Garrison, and Lieutenant Tobrobolsky, a Naval Staff Officer, representing the Russians. The draft of armistice proposed by the Russian commissioners consisted of eight articles, all of which, however, were found quite unsatisfactory. The Japanese commissioners therefore,

[1] The details of the blocking of Port Arthur are as follows: On the 22d of February, 1904, the Japanese naval officers boarded six merchantmen, dashed into the entrance of Port Arthur, and sank the vessels to block the port. On the 26th of March, a second attempt was made by several other vessels, and on the 3d of May the third attempt was made by many vessels. Many brave officers sank with the vessels.

in consideration of the condition of naval affairs, rejected them *in toto*. The Russians, however, earnestly pleaded for certain concessions, which after several hours' discussion were finally granted, thus securing the conclusion of the armistice.

The following statement was published by the Naval Staff of the Imperial Military Headquarters on Thursday afternoon:

In order to conclude the terms of armistice in accordance with Art. V. of the Russo-Japanese Protocol relating to armistice, Rear-Admiral Shimamura, representing Admiral Togo, Commander-in-Chief of the Combined Fleet, proceeded with a portion of the fleet to the entrance of the harbour of Lojinpho and met there a squadron under Rear-Admiral Jessen, representing the Russian Navy, on September 18th, and fixed the sphere of armistice on the seas as follows:

Agreement Relating to the Delimitation of the Sphere of Armistice on Sea.

The undersigned, Rear-Admiral Shimamura and Rear-Admiral Jessen, who have been properly authorised to act on behalf of the respective Commanders-in-Chief of the Fleets, conclude an agreement as follows:

The sea bordering on the coasts of the belligerents is divided as follows:

The boundary line starts from Lejionoff promontory, runs 30 nautical miles to the southeast, connects the point 42° N. Lat. and 136° E. Long.; point 46° N. Lat. and 140° E. Long.; point 48° N. Lat. and 141° E. Long.; point 50° N. Lat. and 141° 23′ E. Long.; and point 51° 48′ N. Lat. and 141° 23′ E. Long. The narrowest portion of the Mamiya straits between the last-mentioned point and point 53° 27′ N. Lat. and 141° 27½′ E. Long. is made a neutral zone. The boundary line again starts from the point 53° 27′ N. Lat. and 141° 27½′ E. Long. and runs to the point 56° N. Lat. and 142° E. Long. and point 56° N. Lat. and 148° E. Long., and then, passing through the central point of the Shumushu straits, coincides with the parallel of 50° 50′ N. Lat.

The narrowest part of the Mamiya straits is made a neutral zone.

The navies of both belligerents are prohibited from passing the said boundary line.

This resolution comes into force from the day of signing and will be valid during the period of armistice.

As a guarantee of the above, each representative signs his name to this protocol.

(Signed) REAR-ADMIRAL SHIMAMURA.
REAR-ADMIRAL JESSEN.

September 18th, 1905.

During the meeting, Admiral Jessen asked the Japanese representative for permission to despatch a transport from Vladivostock to Kamtchatka with provisions and other necessaries, on the ground that as the communications with that district would be blocked by ice after a fortnight, the people there would probably die from starvation if the supplies were not at once sent. Owing to the pressure of time, Rear-Admiral Shimamura immediately consented to the request and granted a pass to the Russian Admiral.

Sect. V. Armistice in North Korea.

Colonel Oba, the commissioner appointed from the North Korean Army to conclude terms of armistice with the Russian Army in that district or quarter, met the Russian Commissioner on Sept. 16th, 1905, at a place north-east of Hoiryong.

The conference on that day was ineffective, as the Russian Commissioner had not been fully authorised to conclude the terms of armistice. A second meeting took place on the 20th. But that attempt also proved fruitless.

Russian papers attribute the non-conclusion of an armistice in North Korea to the unreasonable proposals of the Japanese Commissioners. But the truth is that the Russians themselves proposed terms that were unacceptable to the Japanese. For instance, in spite of the fact that the Japanese are now in occupation of the left bank of the Tumen, on the upper reaches of the river, the Russians proposed that the river itself be made the boundary of the spheres of influence of the respective armies. The Japanese commissioners refused to accept such terms, and the Russians withdrew, promising that they would consult their commander-in-chief. So far there has been no intimation of a final decision from the Russian side; but in view of the fact that there exists a sort of oral promise of truce and that the day of the ratification of the peace treaty is drawing near, the formal arrangements for an armistice in North Korea can be, it is believed, dispensed with, without any inconvenience to either side.

CHAPTER IX.

THE OCCUPATION OF SAKHALIN.

It was by the occupation of Sakhalin that the rules prescribed in Arts. XLVII. to LVI. of The Hague Convention were put into practical application. The occupation of Manchuria was not an occupation of the enemy's territory, for it was on the neutral territory of China. Thereupon the occupation of Sakhalin is taken as a good example of the application of the rules of occupation. It should be added with gratitude, that much of the material hereinafter mentioned has been supplied by Mr. Ninagawa, who was a legal adviser of the Japanese Sakhalin Army.

Sect. I. Premeditated Plan for the Occupation of Sakhalin Island.

More than half of Sakhalin was originally a Japanese dominion, and the occupation of the island was something like the recovery of a lost territory, so that its occupation was looked upon by the Japanese people with a specially deep interest. On the island, therefore, the Japanese Army not only endeavoured to adhere to the rules of International Law, but paid attention to its land, forests, people, and all other things.

A plan in connection with the occupation had been framed by the Japanese army, the principal points of which were as follows:

1. The extent of the occupation shall comprise the whole of Sakhalin Island, adjacent islands, and territorial waters.

2. The position of army stations during the time of the occupation shall be decided according to circumstances; but the chief military administration offices shall be stationed at Alexandrovski, Zuikoff,

and Korsakovski under the charge of the highest officer of the army to be stationed at each of them, their administrative boundaries following the old lines of district demarcation.

3. Any movable property which belongs to the enemy's state and which is useful in military operations, shall be seized as booty.

4. New plans shall not be inaugurated or existing laws and customs altered, save in case of necessity for administration or for military operations.

5. The services of the old administrative officials (those connected with civil suit, collection of taxes, post, telegraph, fisheries, forestry, and mining) may be made use of as they are required, so far as they do not affect the safety of our army; and in this case a certain remuneration shall be paid them. It depends upon circumstances whether these officials shall be employed as officials or as mere advisers. If they avail themselves of their authority for impeding our military operations, they shall be punished according to martial law.

6. Taxes and other imposts shall be collected as far as possible in accordance with the existing rules, and applied towards the expenses of administration. The business of the inhabitants (including neutrals) shall therefore not be prohibited; but if they fail to pay the taxes or imposts, or behave illegally, not only shall their business be prohibited, but a fine may be imposed upon them.

7. No one shall be allowed to keep arms or ammunition unless by special permit from our army.

8. Irregular combatants, individual opposers, and those who speak or behave against our army, shall be punished according to martial law.

9. Prisoners in jail and those recognised as harmful to our army may be sent away into the Maritime Province by certain reasonable means.

10. Those people who desire to return to their home country shall be sent to the Maritime Province.

11. The inhabitants shall not be allowed to hold communication or correspondence with any places outside the island. They shall also not be allowed to hold an assembly or to issue printed matter without permit.

12. The rate of exchange between our paper money and the Russian coins shall be fixed and published.

13. Until the time of completing the occupation, no vessels or persons, other than those useful in military operations, shall be allowed to enter the territorial waters or the island. This rule holds good even after the completion of the occupation for those without a special permit from the Minister of War or the Commander of the Occupation

Army. If the Minister of War issues such a permit, the Commander of the Occupation Army shall be notified.

14. Fishing being harmful to military operations, it shall be prohibited, except for those with a special permit granted on account of necessity to the army.

It was in accordance with the foregoing premeditated plan that the occupation of Sakhalin was carried out, although this does not mean that every rule of the plan was given a practical application.

Now, an account of the practical side of the occupation will be treated under several separate heads.

Sect. II. Surrender of the Sakhalin Army.

At the time when the Japanese army occupied Luikoff on the 27th July, 1905, the Russian Army, which had retreated from Alexandrovski, was far away in the direction of Onor. An immediate pursuit of the enemy was made by our army, advice being sent at the same time through a Russian official remaining at Luikoff to General Lyabnoff, Commander of the Russian Sakhalin army, to come to terms. On the 30th of July Lieutenant Actinoff sought the Japanese Army as an envoy and brought the following letter:

Onor, 18th July, 1905.

Commander Japanese Outpost Army.

SIR:

In order to stop warlike operations, for the sake of avoiding further useless shedding of blood, I hereby request to know what the commander of your army proposes to do. I hope your reply will be given to Actinoff, whom I have sent to you with the present letter, as a herald.

Yours truly,

LIEUT.-GENERAL LYABNOFF,
Commander Sakhalin Army.

There was also another letter, namely:

Onor, 18th July, 1905.

Commander Japanese Army, Sakhalin.

SIR:

Want of medicine and bandage materials, as well as the impossibility of giving treatment to the wounded, has compelled me, for the sake of humanity, to accept your advice, sent through the Governor of

Tuimoff province, to stop further bloodshed, on condition of your guaranteed protection of the lives and properties of the inhabitants of the island.

Yours truly,
(Signed) LIEUT.-GENERAL LYABNOFF,
Commander Sakhalin Army.

In reply to these letters, the Japanese Army proposed the following conditions, to which Lyabnoff consented:

Terms of Capitulation.

1. The soldiers of the Russian army and their attendants all to disarm themselves and to be made the prisoners of the Japanese Army.

2. To hand over to the Japanese Army the Russian arms, horses, provisions, and other military articles, as well as the money, documentary securities, and other movable and immovable properties that belong to the state in the same condition as they now stand.

3. The Russian Army to hand over to the Japanese Army the papers and books useful in the administration of Sakhalin.

4. The Russian Army to hand over to the Japanese Army all the papers and books in connection with the organisation of the Sakhalin garrison.

5. For putting in order the persons, horses, and all other things to be delivered to the Japanese Army, the Russian Army shall organise a committee of suitable persons to consult with a committee from the Japanese Army as to the procedure of the delivery.

6. With regard to the particulars for carrying out the above clauses, the Japanese Committee shall give instructions to the Russian Committee.

7. If the present Terms of Capitulation are signed, the Commander of the Russian Army and his staff shall come to Luikoff on the 1st of August (19th of July by the Russian calendar), 1905, at 7 p.m.

8. The Japanese and Russian Armies shall each make out one copy of these Terms of Capitulation, which shall come into force immediately on the day of signing.

Dated, Hamdase, 31st of July of the 38th year of Meiji.
" " 18th of July, 1905, by the Russian calendar.

(Signed) S. KOIDZUMI,
Chief of the General Staff of the Japanese Sakhalin Army, and Plenipotentiary of the Japanese Army.

(Signed) TARNSENKO,
Commander of the Alexandrovski Reserve Battalion, and Plenipotentiary of the Russian Army.

The Terms of Capitulation were instantly put into operation, and 64 Russian officers and 4319 non-commissioned officers and men came under the Japanese control.

Remark. It is an illegal contract in International Law to agree to the transfer of land by a capitulation agreement, as was done by the French Commander in his capitulation agreement in the Franco-German War of 1870, when the whole French Army surrendered to the Germans at Verdan; and he has received severe blame from scholars on that account. (See Bonfils, Art. 263.) With regard to the transfer of the immovable property mentioned in the Russian Capitulation Agreement made out at Sakhalin, it was meant to refer to such immovable property as an arsenal which could legally be made booty of war; our army having never intended to demand of the Russian Army anything other than a legal contract.

Sect. III. The Military Administration System.

As was mentioned in the premeditated plan, the military administration in Sakhalin was carried out at the three places of Korsakovski, Alexandrovski, and Luikoff, placing the highest officer of each place in charge of its Administration Office, with an Administration Committee organised under him. Thus, the principal Military Administration Office in the south was opened at Korsakovski, where the headquarters of an army brigade was stationed; and in the north, at Alexandrovski, the site of the Headquarters of the Army, and the third at Luikoff, also the site of the headquarters of another army brigade. At Alexandrovski, the capital of Sakhalin Island, the administration was carried out with Colonel Kawamura, Chief of the Sakhalin Army Staff, as the chairman of the Administration Committee that consisted of the Colonel himself, staff adjutants, legal advisers, and some other officers and those of equal rank, all of the Army Headquarters, and the result was on the whole an excellent management. When the Headquarters of the Sakhalin army was to leave North Sakhalin, the military administration was intrusted to certain officers of the 51st Foot Regiment, who formed a committee for handing North

Sakhalin over to Russia, and who continued to conduct the administration well until the time of the actual transfer.

In order to avoid mistakes against International Law in the administration, the Commander of the Sakhalin army ordered the following instructions to be drawn up and distributed among the Administration Committees, namely:

Instructions to Military Administrative Officers.

1. The object of the military administration officers shall be to preserve the tranquillity of the army and the order of the occupied territory.

2. The military administration officers shall respect the laws in force in time of peace and otherwise, except in case of absolute impediment.

3. It is forbidden to compel the population of an occupied territory to take part in military operation against their own country.

4. It is forbidden to constrain the population of an occupied territory to recognise, by the taking of an oath, the power of the enemy.

5. Family honour and rights, the lives of individuals and their private property, as well as their religious convictions and the right of public worship, are to be respected. Private property is not to be confiscated.

6. If the occupant collects in the occupied territory the imposts, duties, and tolls established for the benefit of the state, he shall do so, as far as possible, in accordance with existing rules of assessment and apportionment, and the obligation shall devolve upon him of providing for the expenses of the administration of the occupied territory in the proportion to which the legal government was bound to contribute.

7. If, in addition to the imposts contemplated in the preceding article, the occupant levies other money contributions in the occupied territory, he can do so only to the extent of the needs of the army or the administration of the occupied territory.

8. No collective penalty, pecuniary or otherwise, shall be imposed upon communities because of individual acts for which they could not be regarded as collectively responsible.

9. The military administration officers can hold trials, give judgment, and inflict punishment in accordance with martial law, as well as the military court regulations.

Sect. IV. Treatment of the Population of the Occupied Territory.

I. *Russian Civil Officials, Their Families, and the Families of Military Officers at Sakhalin.*

Even after Japanese occupation of Sakhalin, Russian civil officials, their families, and the families of military officers could safely remain on the island under the protection of the Japanese Army; but when General Lyabnoff surrendered to Japan with his army, all the civil officials, from Von Burge, the highest in rank, down to the policemen, lowest in rank, without distinction of either executive or judicial officials, desired to give up their offices and to return to their home country with their families and their properties, and sent in an application for the permission to the Japanese Commander under their joint signatures. According to International Law, the civil officials of an occupied territory cannot be compelled to continue to look after their original offices; but as they are naturally versed in the customs and usages of the territory, it is customary to make them attend to their old business as far as possible. But in Sakhalin all of the civil officials demanded permission to go away without exception; so that Japan had to look after every detail of administration herself, to the great inconvenience of her army. However, as it was not a proper thing for them to be refused their application, the Japanese Army agreed to let them go away, asking them at the same time to wait till Japanese steamers should arrive at Alexandrovski. In the meantime, the Sakhalin army gave them the following conditions to be observed by them on their leaving the island, namely:

1. The passage and food expenses, from Alexandrovski to Aomori, Japan, shall be paid by the Japanese Government.

2. On their arrival in Japan, they shall be handed over to the French Consul, under the instructions of the Japanese authorities.

3. The capacity of transport being of a limited nature, they shall be allowed to take with them only such personal luggages as can be carried with them. Any property over this limit, no matter whether

it be movable property or immovable, shall be disposed of prior to their departure.

4. They shall promise in writing that even if they leave any property on the island, they shall not afterwards offer any claims whatever to the Japanese Government respecting it.

The Russian officials agreed to these conditions, and left Sakhalin after disposing of their properties.

II. *Russian Subjects.*

In conformity with the principles of International Law, the Japanese Sakhalin army did its best to protect those Russian subjects who had no direct relation with warfare, so as to enable them to pursue their respective occupations without inconvenience. Of the inhabitants in Sakhalin, those who had formerly been criminals formed a majority, although ordinary people living in this island for the purpose of carrying on commerce or industry could not be said to be few in number; and it was this latter class of people that the Sakhalin Army specially endeavoured to protect, and to make them feel at rest for the safety of their lives and properties. But there were also some among them who desired to return to their home country via Japan, while a comparative few wanted to go direct to Nicolskoe on the opposite coast. The army granted both kinds of application; for those going to Aomori, Japan, on the same conditions as those given to the officials, and for those going to Nicolskoe, on condition that they should go there wholly at their own expense, but that they could carry their properties with them without any limit at all.

In the meantime the Sakhalin army published the following notification for the convenience of those returning to their own country:

Notification.

Those inhabitants of this island returning to their own country, who desire to exchange their Japanese money into Russian currency, may have exchange made at the Cash Department of the Sakhalin Army.

Exchange made from 9 a.m. till 3 p.m. every day.

August, 1905. Headquarters, Sakhalin Army.

Relief of Russian paupers, as well as medical treatment given to the sick deserve mention. Of the Russian paupers who applied for relief, those who proved on examination to be physically unable to support themselves on account of their being immature, infirm, or superannuated, were given an allowance of dried bread, tinned beef, flour, and some such provisions out of the booty captured from the enemy. To avoid confusion and partiality in giving the relief to so many people every day, one week's provisions were distributed among them each time, providing every one of them with a certificate which proved the date of the relief given, and which had to be presented when he wanted another supply. With regard to people seriously ill, those who were helpless were taken into sick rooms set apart specially for such a purpose, and attended all the time by several Russian nurses, who were engaged with wages in kind out of the booty. The patients were provided with provisions, shirts, blankets, and other necessaries also out of the booty, and given treatment every day by our military surgeons, under the frequent superintendency of administration officers. As to those slightly sick, Japanese hospitals gave them medical treatment without any limit to their number—medicines and other materials having all been taken from the Russian military hospitals. Thus the paupers and others of Sakhalin were so much pleased with the Japanese administration that they greeted with "*Banzai*" every Japanese soldier they met on the way.

The next thing to be mentioned shall be the special arrangements devised by the Sakhalin Army for the protection of the inhabitants on the island. In Sakhalin there had been several government shops established on the co-operation principle from which the islanders used to get their daily supplies; but after the Japanese occupation of the island such shops were all closed, and the people felt some inconvenience for want of them. The Japanese Army therefore published the following Regulations for the Convenience of the People at large:

Provisionary Regulations for Private Shop Organisation.

1. The object of establishing the shop shall be to supply daily necessaries to the Russian subjects at fixed prices.

The shop may make sales also to Japanese soldiers and their attendants.

2. The shop shall be opened for the present at Alexandrovski.

3. The shop shall be under the superintendence of the Military Administration Office in every respect. The Military Administration Committee shall have the right to examine the merchandise, books, and papers of the shop, if found necessary.

4. The shop shall report to the Military Administration Office the descriptions and prices of the articles to be sold, and shall be subject to its approval. In case of altering the prices, the alterations shall also be reported to the Military Administration Office for its approval, with an explanation of the reasons attached, before such alterations shall actually be made.

5. The shop shall report to the Military Administration Office the descriptions and value of the articles sold every week.

6. The shop shall post up conspicuously a price-list (in both Japanese and Russian currencies) of the articles to be sold, in both the Japanese and Russian languages.

7. The names of the shop's staff shall be reported to the Military Administration Office, and any alteration of the personnel shall also be reported.

8. The shop's staff shall not hold any correspondence concerning the army, nor shall it have any relations other than the business of the shop.

9. The business hours of the shop shall be fixed in accordance with the instructions of the Military Administration Office.

10. The shop's staff shall not under any pretext whatever effect the transfer of movable or immovable properties owned by the Russian inhabitants, nor shall it create either pledge or mortgage on them, unless approved by the Military Administration Office.

11. The Military Administration Office reserves the right to order the evacuation of the shop or the withdrawal of its staff. And in this case, the shop's staff shall not sue for any damages arising out of such a step.

III. *Exiles.*

(a) *Political Exiles.* According to the principles of International Law, it is customary not to hand over political exiles to their home government, even if the latter demands

their extradition. It was therefore the policy of the Japanese Army on its occupying Sakhalin Island not to hand over to the Russian authorities those political exiles who had once come under Japan's control, but to make them win their liberty in accordance with the principle above referred to. Fortunately, Dr. Russel, an American resident at Kobe, Japan, made an offer to send the Russian political exiles at Sakhalin to the free country of America at the expense of Americans. The offer was accepted by the Japanese Government and transmitted to those political exiles at Sakhalin, who were six in number, including a Doctor of Laws by the name of Trigony. This Doctor of Laws and two other political exiles accepted the offer and came to Aomori in company with the Russian Sanitary Staff. At Yokohama they received kind assistance at the hands of Dr. Russel and Mr. George Kennan, an American journalist, and started for America. The other three exiles preferred to remain at Sakhalin on account of their havhaving large families, some of whom were seriously ill at that time.

This release of political exiles won the unanimous applause of civilised nations, and it was by the Jewish people in the United States of America that the affair was received with the strongest approval. The following is the correspondence from Washington under the date of July 20, 1905:

"Reports of the release of political exiles from Sakhalin aroused lively interest among the Jews in this country on account of the presence of a small number of their race among them, as did also information regarding their status after our occupation."

A petition, as inserted below, with a long list of signatures was sent to the Japanese Legation in America:

Petition in Regard to Russian Political Prisoners on Sakhalin Island.

To His Excellency, Kogoro Takahira, Envoy Extraordinary and Minister Plenipotentiary of Japan.

SIR:

Having assumed supreme authority in the island of Sakhalin, the Japanese Government has now in its custody a number of Russian

political prisoners and exiles. Some of these were banished to the Sakhalin penal colony after having served terms of fifteen and twenty years in the jail of the Schlusselburg Fortress. Others were deported without even the formality of a trial by court-martial.

These men and women have been punished for seeking to realise in Russia the same principles of human liberty which are honoured by Japan and by all other enlightened nations.

They are now detained without any warrant of law, for it is not the duty of any government to enforce the sentence of foreign tribunals, and especially in relation to offences of a political nature. On the other hand, Japan has never surrendered to Russia political offenders who have sought refuge on Japanese soil; and surely she will not establish such a precedent now, at a time when public sentiment in Russia itself demands amnesty for all political offenders.

The established policy of Japan, as well as justice to the political prisoners in Sakhalin, calls for the immediate release of these men and women.

We, therefore, the undersigned citizens and residents of the United States of America, respectfully petition the Japanese Government to add another example to its distinguished record of humanity and fairness, and at the same time manifest its friendly sentiment towards the Russian people, by granting freedom to these victims of political oppression.

Very respectfully yours,
Name ——, Address ——.

As for the treatment of Russian prisoners found in Sakhalin, the following principles were held in view:

1. All the prisoners, except political criminals, are to be expelled as occasion requires to other Russian territories.

2. Political exiles who have a mind to emigrate to alien lands are to be accordingly treated.

3. Those criminals who have become volunteers are to be treated as volunteers.

4. These regulations are to be applied to all criminals independent of their nationality, race, and religion.

(b) *Convicts.*

Concerning the treatment of convicts the Japanese Government made a special study prior to her occupation of Sakhalin.

Preambulary Act of Sakhalin Exiles.

Although of Russian exiles in Sakhalin, those who already had become volunteers are of course to be treated as belligerents, the rest required special consideration. They divide themselves into three heads, (1) exiled peasants, (2) exiled settlers, (3) exiled criminals, each of which should be separately studied.

(1) Exiled peasants, in round numbers 6000, are freemen in all but name, and now that their term of punishment has expired, they have every right to reside anywhere, except in the capital. They are mostly good citizens and are engaged in various sorts of business. After the prison life of ten years was over, they had family ties and their fortunes earned by farming, all of which made of them a people peaceful enough to make their residence in the island desirable.

(2) Exiled settlers, in round numbers 9000, have the right to live and to engage in business of certain sorts, within the domain of the Governor-General of Amoor, since the expiration of their terms of punishment. Most of them, however, having been but recently freed from prison life, may be troublesome to the maintenance of good order, because of their indolent way of life; so that it may be prudent to let them leave the island, except those who are found by our authorities to be of especially good conduct. Having, as above mentioned, the right to reside within the domain of the Amoor Governor-General, they may be removed to the coast districts without any trouble.

(3) Exiled criminals, in round numbers 7000, are criminals proper —some in prison and some engaging in outdoor work under surveillance. This sort of prisoners must be looked upon in a way quite different from either of the two above mentioned, for they were sent there specially escorted, and are by far the most ferocious of Russian outlaws. Hence the best course we can take with them is to follow the same measures as the Russian Government practised, and if confinement is not adequate, they may be legitimately driven out of the districts occupied by us. As for the proper precautions to be taken so as to secure good citizens against possible apprehension arising from these dangerous prisoners being at large, the following practical measures may be suggested: (1) to command their withdrawal, in the same condition as they have been, (2) to make Russian police authorities, if any still remain, accompany these prisoners, (3) to use prisoners of war as escorts for them, if the police authorities are found ineffectual for the purpose. These measures being duly carried out, they may be sent without any apprehension into the coast districts.

Moreover, as regards properties belonging to prisoners turned out, prisoners' private possessions should be carefully discriminated, by due consideration of facts, from state properties temporarily used by them, and the former, either movable or immovable, disposed of according to the legal regulations of land combats and the spirit of International Law.

In general it was in accordance with the provisions contained in this preambulary measure that the Japanese Army treated the Sakhalin exiles. But to our surprise, when the Japanese Army entered Sakhalin Island, the confusion was taken advantage of by the prisoners in jail, some breaking jail, while some others seemed to have been released by the Russian authorities. At all events, the mixture of such prisoners among the ordinary people was a menace to general tranquillity; and every effort was made to recapture them, but without satisfactory results. It is believed, however, that most of them did not long remain in the island, but went away together with other people. At the time of the occupation of the island, only 100 prisoners were found remaining in the prison at Luikoff. They were escorted to Alexandrovski, when they were sent to the Russian dominions, so as to make Russia herself look after her own criminals.

IV. *Priests.*

The Sakhalin Army had due regard for Russian religious convictions and their public worship, paid deep respect to churches and their accessories, and did not fail to give ample protection to priests, who were therefore naturally expected to be at ease under the protection of the army and to continue in their sacred calling. But when they saw the Russian civil officials all about to go away, they had no courage to continue their religious and beneficent work on the island, but all, except one at Alexandrovski, started for their home country, leaving behind them their many brethren, especially those who had formerly been criminals, and who therefore should not have been allowed to go without religious admonition even a day.

There being of course no reason whatever to prevent their

leaving the island, they were allowed to follow their free will, and were sent to Aomori by a transport, together with the civil officials. They were also allowed to carry their luggage with them, and given a special certificate of protection for their religious valuables, as requested; of which the following is an example:

"Alexandrovski, 8th August, 1905.

"The bearer, Alexander Winocroff, priest of a Russian church at Luikoff, carries with him most valuable religious articles, such as a Gospel, Sacred Cross, Antemin, and some such things; and all persons shall be prohibited from touching those articles.

"He also carries with him his church papers relating to births, burials, and baptisms, which shall not be violated without authorisation.

"Headquarters Japanese Sakhalin Army."

With regard to the one priest who remained at Alexandrovski, the Japanese Army gave him a certificate which permitted him to go to and preach in any village, so as to enable him to freely administer religious and funeral services after the Russian style.

Sect. V. State and Private Properties at Sakhalin.

Arts. LII. and LIII. of The Hague Convention were strictly followed by the Sakhalin Army in imposing requisitions or contributions, or in dealing with state and private properties.

In August of 1905 the Japanese Army published the following Notification at Alexandrovski:

"Those inhabitants of the island who own buildings, such as houses or go-downs, or transports, such as cars, sledges, horses, or cows, shall at once report their ownership to, and get its confirmation from, the Japanese Military Administration Office.

"Those properties for which such a report shall not have been sent in by the 30th of this month shall be regarded as the state properties of Russia."

The object of the Notification was to distinguish state properties from private, so as to be enabled to protect the latter

properly, and to know at the same time the basis of taxation which was to be imposed later on. For those things which were made clear, as a result of the Notification to be state properties, the state ownership was shown by nailing a tablet to every one of them.

There was another Notification published, it having been found necessary to exercise some kind of supervision to prevent Japanese merchants or Russian residents from extorting exorbitant profits, by taking advantage of the hurry with which some inhabitants of Sakhalin were about to depart for their own country.

It was as follows:

Notification.

Any person desiring the transfer of property owned by inhabitants of Sakhalin shall send in an application beforehand to the Headquarters of the Sakhalin Army through the Military Administration Office.

The following Notification and Military Ordinance were also for similar purposes:

Notification.

Any person desiring to secure a lien or mortgage on property owned by inhabitants of Sakhalin shall get a permit from the Headquarters of the Sakhalin Army through the Military Administration Office.

Military Ordinance No. 10.

Any contract made with a subject of the occupied territory in relation to houses or ground within the island shall not come in force during the time of the occupation, unless permitted by the proper authorities, except in case of contract made between the authorities and the people of the occupied territory.

This Ordinance affects transactions in the past, and is operative from the date of the landing of the Occupying Army.

28th August, 1905. Commander Sakhalin Army.

It must not be omitted how the Japanese Army paid special attention to the following points:

I. *Forests.*

The Island of Sakhalin is extremely rich in large and flourishing forests, and it may not be far-fetched to say that the island itself is nothing but a big forest, towns and roads being

little spaces cut out of the midst of this thick growth. The forests mostly consist of lanceolate-leafed trees of the pine family; but in places where mountain torrents pour down, spatulate-leafed trees can be seen in their luxuriant growth. But at several places there are traces that clearly show the burning of these forests, which might have been done either to facilitate hunting, or to break up the ground, or through mere carelessness. With a view to protecting these forests, which are very important in preserving the resources of the land, as well as to the thriving of fish, which are a staple of the island, the Japanese Army Headquarters published a Notification for the Russians, Japanese, and the people of other nationalities. The notification was as follows:

All persons are prohibited from felling forest trees on this Island, unless permitted by the Japanese Army Headquarters.

August, 1905.

MILITARY ADMINISTRATION OFFICE, SAKHALIN.

II. *Coal Mines.*

The northern half of Sakhalin Island is rich in coal beds, and there were several mines in actual use. According to reliable Russian mining experts, the area from Dui to Mukaji via Alexandrovski contains comparatively numerous coal beds, which show an abundance of the mineral in those districts. Of the mines now being worked, the two collieries at Mukaji and Dui were found, on investigation made after the occupation, to be private undertakings carried on by the Makowski Company, and the Japanese Army did not fail to take necessary steps to protect them. Some coal from the Dui Colliery, which had previously been made use of in the name of the Japanese Army, was properly paid for when the north of Sakhalin was handed over to Russia.

According to several books published in Japan in relation to Sakhalin, all the coal mines in the north of the island were described as the Government undertakings of Russia; but the actual inquiry made by the Japanese Army immediately after the occupation of the island disclosed that the two collieries

of Dui and Mukaji were private undertakings of the Makowski Company. In the meantime the manager of the Dui colliery, by the name of Grunshakoff, who lived then at Alexandrovski, came personally to the Headquarters and explained the facts of the case. To avoid future complications, therefore, the Japanese Army found it necessary to preserve the collieries as they then stood, and sent the following letter to Horse Regimental Commander Ando, the highest officer of the Dui Occupying Army, under the signature of Colonel Kawamura, Chairman of the Military Administration Committee, namely:

Commander Horse Regiment, Dui.

SIR:

The ownership of the colliery at Dui being as yet unsettled, its necessary tools, implements, and steam launches, as well as the coal at the pit mouth, you will kindly see your way not only to prevent from being touched, but to give necessary protection to same.

Yours truly,

(Signed) MILITARY ADMINISTRATION COMMITTEE.

P. S.—If the navy comes to take coal, kindly notify them of the contents of this letter.

After the occupation of Sakhalin, it was known that the collieries were owned and worked by the Makowski Company, and the Japanese Army did not fail to give proper protection to those properties.

III. *Petroleum Fields.*

With regard to petroleum fields, one of the most important resources of Sakhalin, it was found to be an undertaking to be given to individuals according to a document presented to the Headquarters of the Sakhalin Army by a certain Pheodor Kreiye, originally a German subject, but now a naturalised Russian, for convenience in doing business. The document was as follows:

Batana, 2nd May, 1899.

PHEODOR KREIYE, ESQ.,

Mining Engineer and Retired Lieutenant of Prussia.

SIR:

I hereby inform you that our Imperial Minister at St. Petersburg has taken the trouble in your behalf to get the prospecting right on the

two petroleum fields in Sakhalin Island, in answer to the application made in your address to His Majesty the Emperor under date the 15th of November. The meeting of the Russian Ministers decided to grant to you the mining business and the petroleum prospecting right in the Maritime Province and the north of Sakhalin respectively. The grant was sanctioned on the 23rd of November, and sent out to the Governor-General of Amur, Maritime Province, under date of the 19th of December.

I take this opportunity of expressing my hearty thanks for your letter sent to me, dated the 12th ult.

Yours truly,

(Signed) VON SCHIBURG,
Imperial German Consul-General.

As may be seen by the above document, Kreiye wanted to carry on as a private business the extraction of petroleum in north Sakhalin, and the Japanese Army, recognising his right to it, decided not to intrench on the business, although the army had nothing directly to do with the matter during the short occupation of the north, the fields in question lying far away in the vicinity of the Nowhelewksi harbour on the east coast of the island.

The Military Ordinances promulgated by the Sakhalin Army in relation to mines, forests, etc., were as follows:

Military Ordinance No. 4.

A new license shall not be granted for the extraction of minerals, felling of forest trees, or hunting in this island, except in case of being permitted by competent authorities for temporary utilisation. Those who extract minerals (including petroleum), fell forest trees, hunt, or occupy land without a license shall be punished with a fine not exceeding five hundred yen, and, according to circumstances, may be banished from this island.

In order to enforce the order of banishment, the proper authorities are empowered to make use of every forcible measure.

August 28th, 1905. Headquarters Sakhalin Army.

Military Ordinance No. 5.

Unless ordered or permitted by the authorities, all persons shall be prohibited from carrying out of this island any minerals (including petroleum), forest productions, wild birds (including their eggs), marine animals, domestic fowls (including their eggs), domestic animals, or hides that have been produced in this island. Those who violate this

prohibition shall be punished with a fine not exceeding five hundred yen, and, according to circumstances, may be banished from this island.

In order to enforce the order of banishment, the authorities are empowered to make use of every forcible measure.

August 28th, 1905. Headquarters Sakhalin Army.

Sect. VI. Application of The Hague Convention, Article LVI.

Art. LVI. of The Hague First and Second Convention says:

Town property and the property of establishments consecrated to religious worship, to charity and education, and to the arts and property. All seizure, destruction, or international defacement of such establishments, of historical monuments, of works of art or of science is prohibited, and the offenders shall be prosecuted.

And it was in conformity with this article that the Sakhalin Army protected various establishments as detailed below:

I. *Protection of Orphanages.*

The orphanages in Sakhalin Island received ample protection at the hands of the Japanese Army; and innocent children amused themselves in the play-grounds as usual, pursued their study in the school rooms, attended the church on Sundays, as if they had not known anything about the war at all—as was the case at the Luikoff Orphanage.

Later, their superintendent, expressing his desire to send the children back to their home country, the Japanese Army agreed to it, and sent them under full protection and at the expense of the Japanese Government from Alexandrovski to Aomori, Japan, and thence to Yokohama, where they were handed over to the French Consul. His Majesty, the Japanese Emperor, specially sent out his military equerry to pay a visit and to give toys to the orphans. It was therefore natural that these Russian orphans, as well as their superintendent, were deeply grateful for the kindness of both the Japanese Emperor and the Japanese Army.

The following was the application sent in, requesting the Japanese Army to send back those orphans:

Alexandrovski, 2nd August, 1905.
(Russian July, 1905.)

Commander Japanese Army at Sakhalin.

SIR:

I hereby beg to solicit you to send to Japan, by the steamer leaving the day after to-morrow, the orphans of the Sakhalin Orphanage, established under the protection of Her Majesty the Empress Dowager of Russia, Maria Feodrona. I also solicit you, if possible, to give instructions to the competent Japanese authorities to remove the orphans of the Branch Orphanage at Luikoff to Alexandrovski, in order to send them back together with the above-mentioned children. The orphans of both orphanages together number 74 in all, and there are 10 attendants. The expense of food and transport for both the orphans and their attendants shall be borne by the Russian Government.

Yours truly,

(Signed) VON BUNGE, *Acting Military Governor.*
(Signed) SCHITZEL BAKOFF, *Chief Secretary.*

II. *Protection of Charity Hospital.*

The Sakhalin army, which always placed much importance on humanity, protected the patients of a charity hospital, and continued to supply them with food and medicine from the time of the occupation of the Island till the transfer of north Sakhalin to Russia. At the time of this transfer of the north, the Russian Committee who saw the condition of the patients, deeply appreciated the kind treatment of them, and declared that they would report the facts in the case to their Foreign Department. The following was an application sent in by the Acting Military Governor of Sakhalin, von Bunge, at the time of his leaving the Island:

Alevandrovski, 3rd August, 1905.

Commander Japanese Army at Sakhalin.

SIR:

The patients of the Maltzuimoff Charity Hospital are now at Onor village, Tsuimoff province, but their exact number cannot be known until the Governor of Tsuimoff province arrives at Alexandrovski. The patients all consist of aged, blind, or disabled persons who are unable to look after themselves without assistance from their attendants. You are therefore solicited to undertake the care of them, and any expenses

incurred thereby shall be defrayed by the Russian Government, as a matter of course. In the meantime I shall make an application to my Government for taking steps to have these patients removed from the Island as soon as possible.

Yours truly,

(Signed) Von Bunge, *Acting Military Governor of Sakhalin.*
(Signed) Schitzel Bakoff, *Chief Secretary.*

That the people of an occupied territory, as well as its charities, should be protected in conformity with Arts. XLVI. and LVI. respectively of The Hague Convention was well known to the Japanese Army; and it need not be stated that the Japanese Army would have treated the Charity Hospital and its patients with humanity even without such an application as that above quoted.

III. *The Nowmihailovskoe Lunatic Asylum.*

As was above stated, all the Russian officials desired to return to their home country, and even physicians requested to leave the Island, either alone or taking their patients along with them. This was also the case with the Nowmihailovskoe Lunatic Asylum, although it was not an exception in the matter of humane protection. It was requested that its patients be sent under the attendance of physicians to Nicolskoe on the opposite coast by a small sailing vessel. The following is the application:

Alexandrovski, 1st August, 1905.

Commander Japanese Army at Sakhalin.

Sir:

At present there are 54 lunatic patients in the lunatic asylum at Nowmihailovskoe village, of whom 10 are fully recovered and who are to be set free. With regard to the remaining patients, it appears to me to be the best plan, for the interests of both the Japanese and Russian Governments, to send them to Nicolskoe, in the Marine Province, by the private sailing vessel *Cameran,* now lying in the harbour of Alexandrovski. I therefore beg to request you to permit me to send those patients to Nicolskoe by the above-mentioned means, providing me at the same time with the necessary cars to carry the properties of the asylum from Nowmihailovskoe village to the port of Alexandrovski, and also with flour and salted meat necessary to support the patients during their journey to Nicolskoe. I further solicit you to

make one of your steamers tow the sailing vessel to the farthest practicable point, in order both to enable the patients to quickly reach their destination and to prevent the possible exhaustion of provisions during the long sailing voyage.

For escorting the patients, I intend to send with them the local government doctor, Rudovski, the nurse Antoff, three other nurses, and some other attendants.

The Government official mining engineer Kozloff, who is included among the patients, became insane at the time of a battle. I hope it will be permitted to send him to Nicolskoe in company with the other patients.

A reply from you in relation to the transportation of the above patients you will please address to me.

Yours truly,

(Signed) VON BUNGE, *Acting Military Governor.*

The application was agreed to by the Japanese Army, which then gave a sailing permit and every possible facility to the patients.

IV. - *Churches.*

With regard to churches, the Sakhalin Army similarly gave them ample protection in conformity with the principle of International Law. Luikoff had a street fight at the time of its occupation; but the big church of the town was so completely protected that it did not suffer the slightest damage, but remained standing, in the centre of the town, as if it glorified the civilised army of Japan. When the envoy from General Lyabnoff first came to the Japanese Army, he was received at this central church, and it was also at this church that General Lyabnoff and his staff were received by the Japanese Army, when they came to surrender, and it is needless to say how deeply the civilisation of the Japanese Army was impressed upon them on their actually seeing the splendid condition in which the church was preserved amidst the surrounding tragic scene.

In Sakhalin Island every town and village had a magnificent church in its centre, which was used, it appears, as a means of uniting the minds of the Russian emigrants in this island, by inducing them to kneel before likenesses of the Czar and of

Ikons, or sacred images. Most of these churches naturally belonged to the Greek sect; but there were also some which belonged to the Protestants and the Mahomedans. To these churches the protection of the Japanese Army was equally extended, without distinction of their sects; preserving their sanctity and preventing them from being used for military purposes, and as soon as the Japanese Army completed the occupation of the whole island, they were at once allowed to carry on their usual religious services. When bells tolled in churches, therefore, the Russian people, men and women, young and old, were seen assembling in them, offering prayer, and invoking blessings, as peacefully as under ordinary conditions.

V. *Schools.*

There was one school at Alexandrovski for primary technical education. When the town was occupied, the Japanese Army found the school buildings left without any occupants, the teachers having discontinued their profession, and the scholars dispersed. The only thing to be done by the army in connection with the school was therefore to simply protect and preserve the buildings. This was done, and it was through a great exertion on the part of the army that they were saved from burning when the museum in the neighbourhood was destroyed by fire.

VI. *Museums.*

Alexandrovski had one museum. When the Russians fled from this town, they left it behind them without doing anything whatever with it, and the building had no other distinguishing mark than a small and old tablet attached to the front with the word "Museum" written on it in Russian characters. As soon as the army found it to be a museum, soldiers were at once despatched to protect it, and the doors were shut and nailed, prohibiting any one from entering it, in order to prevent its contents from the loss or injury likely to occur at that time of confusion. But it was most regrettable that some people set fire to it one night, and reduced it to ashes. The

house next door to the museum on the north was then the official residence of the Commander of the Japanese Sakhalin Army, and the one next door on the south was the official residence of the Chief Civil Administrator of the island, who was at that time away in Korsakovski on business. To make clear the circumstances, the official report is appended:

Report on the Burning of the Alexandrovski Museum.

Yesterday, the 4th, at 11.30 p.m., a fire took place at the museum of this town (the building lying between my official residence and that of the Chief Administrator). The troops stationed in the neighbourhood were immediately sent to the scene of the fire, and every effort was made to extinguish it; but it is to be regretted that the museum building could not be saved on account of the scarcity of available water in the vicinity. It was, however, fortunate that, owing to the slight breeze that night, the fire was prevented from spreading to the adjoining houses.

As to the men, horses, and materials of our army, there was no damage done.

Since our landing in this island our army had taken charge of the museum, closed it strictly and prohibited any person from entering it. Thus, there not being anything in it to have caused the fire, it cannot but be attributed to incendiarism by Russians; which opinion is further strengthened by a report made by the gendarmes then stationed at the Sakhalin Civil Administration Office. Strict search is being made for the criminals.

September 5th, 1905. Commander of the Sakhalin Army.

As may be seen by the above report, the burning of the museum was attributed to incendiarism, and the Headquarters of the Army endeavoured to find out the criminals by publishing the following Notification, but in vain. The Notification reads:

Urgent Notification.

Last night some person, or persons, set fire to the back of the Museum lying between the official residence of the Commander of the Japanese Army and that of the Chief Civil Administration. Any person who gives our authorities any information regarding the criminals shall be given a prize of fifty rubles; and he who captures them, a prize of one hundred rubles.

ALEXANDROVSKI, 5th September, 1905.
Military Administration Office.

CHAPTER X.

THE OCCUPATION OF MANCHURIA.

Sect. I. Principles and Regulations Concerning the Occupation of Manchuria.

Manchuria was under the sovereignty of China, which was neutral during the Russo-Japanese War, and hence Manchuria was neutral territory. But before the outbreak of war, Manchuria was occupied by Russia, and was entirely under her authority. The expulsion of the Russian troops from the three provinces of Manchuria was the principal object of Japan in beginning the war, which was carried on *de facto* in Manchuria. Thus Manchuria came to be occupied by the Japanese, who drove out the Russian troops.

Taking these facts into consideration, it might be said that the occupation of Manchuria was an unique case, different from what is called military occupation of hostile territories in International Law. But the fact that China recognised a portion of her territory as the area of fighting implies that her consent to military operations by belligerents in her own territory was given. And as a form of military operation, the act of occupation is naturally included in this recognition. Consequently the belligerents must be understood as both being privileged to take action similar to those of any common military occupation, on account of the needs of the army as well as of the necessity of securing peace and good order in the occupied territory.

But as the Manchuria provinces were neutral, not every article of The Hague Convention can be applied to the occupation of Manchuria. The heading of Sect. III. of the Convention is "Military Authority in the Territory of the Enemy."

It is needless to say that those who drafted this Convention did not conceive of such a case as the occupation of Manchuria. But when China is understood to have consented to military operations being pursued in her territory, the occupation of Manchuria is understood as a form of military operations, as above referred to, and it will be seen at once that such an occupation must come under the rules of International Law and of The Hague conventions, and that Japan was bound to observe the whole of Sect. III., except such articles as from the nature of the case were inapplicable.

The following articles of the Hague Convention can be applied to the occupation of Manchuria: Art. XLII. on the elements and the sphere of military occupation, Art. XLIII. on the duty of the occupant to respect the laws in force in the country, Art. XLVI. concerning family honour and rights, the lives of individuals and their private property as well as their religious convictions and the right of public worship, Art. XLVII. on prohibiting pillage, Art. XLIX. on collecting the taxes, Art. L. on collective penalty, pecuniary or otherwise, Art. LI. on collecting contributions, Art. LIII. concerning properties belonging to the state or private individuals which may be useful in military operations, Art. LIV. on railway material coming from neutral states, and Art. LVI. on the protection of establishments consecrated to religious worship, charity, etc.

The articles inapplicable to the occupation of Manchuria are Art. XLIV., "It is forbidden to compel the population of an occupied territory to take part in military operations against their own country," and Art. XLV., "It is forbidden to constrain the population of an occupied territory to recognise, by the taking of an oath, the power of the enemy." Now the legal spirit of these two articles is, that it is illegal to force the enemy to oppose their own country. But as the provinces of Manchuria were neutral, these articles did not need to be applied to the case of the natives there. So some Japanese scholar insisted that the Manchurian Chinese could be em-

ployed as guides, or spies, in the places where they live, and should their national laws permit it, they may be constrained to recognise, by the taking of an oath, the power of their enemy.

That part of Art. LII., on requisitions, which says, "And shall be of such nature as not to imply an obligation on the part of the population to take part in military operations against their own country," is a condition which for the same reason does not apply to the subject of the occupation of Manchuria.

There may be some differences of opinion on the question whether Art. LV. may be applied to Manchuria, and whether Japan may enjoy the usufruct of the immovable properties belonging to the Chinese state. But this must be understood as justifiable for the same reason which allows requisitions and contributions from the needs of the army.

Now an effort will be made to give an account of the underlying policy of administration of the occupied territory in Manchuria and the substance of the results obtained.

The prearrangement of the administration of the occupied territory in Manchuria.

I. *Principles Concerning the Administration of Manchuria.*

The following is the substance of what was determined by the Japanese military authorities after a thorough investigation of the matter.

Although it is needless to say that Japan could exercise in that part of Manchuria occupied by the Japanese Army all forms of right accompanying the military occupation, as prescribed in International Law, the policy most appropriate for her was to exercise her power in connection with the administration of the occupied territory in Manchuria only to the extent of the Russian precedents. And as the Manchurian provinces comprise in themselves the Russian lease, the Chinese open ports and the Chinese land, the modes of administra-

tion in these three regions were necessarily different from one another.

(1) *The Russian Lease.*

That portion of the southern part of the Liaotung Peninsula, which was leased by Russia, had been hitherto wholly subjected to Russian control, and all the machinery of legislation, administration, and jurisdiction there was provided by the Russian Government, and the same may be said of Chinchow, where the functions of Chinese local officials were practically ignored by Russia. Administration of the Russian lease (Chinchow included) should have been assumed entirely by the Japanese Government, partly because that portion of territory had remained hitherto entirely in Russian control, and partly because her rights required to be firmly planted there. The same right, however, being based merely on the fact of occupation, and not authorised by any special treaty, any foreign criminal found within the same territory should have been handed over to his own consul to be properly dealt with.

A military administration office should be organised on the land leased, while the chief military administrator should have had entire control over all the branches of administrative and judicial affairs, and a diplomatist or consul appointed as one of his staff should have been charged with all foreign affairs.

(2) *Chinese Trading Ports.*

Four Chinese trading ports are found in Manchuria, that is to say, Yingkow, Datung, An-tung, and Mukden, the last three of which may be, however, looked on as inland ports, for they are as yet scarcely opened to international traffic.

In regard to Yingkow, which at present is a Chinese trading port and occupies a position quite different from those of the inland, the functions of the Chinese local officials which had hitherto been entirely ignored by Russian authorities, should be respected as far as they do not interfere with Japan's military necessity, but at the same time Japan's military administration office organised there should have attended to everything relating to military administration.

Matters connected with customs should be managed by the present officials, unless military necessity requires otherwise.

One or two places on the chief military administrator's staff should be filled by diplomatists or consuls, who should be charged with all foreign and customs affairs.

The Japanese Consul at Newchwang should be notified as soon as Yingkow was occupied by the Japanese force, and he should not only manage ordinary affairs of a consul, but attend the conference of the consul's association, so as to set forth the nation's intentions, to keep watch on negotiations going on between the same association and Chinese local officials, and further to make the consuls of all the Powers better acquainted with her military administrative office.

(3) *Inland China.*

In Inland China, where the function of Chinese local officials had been recognised by Russia, these officials should have been left to manage local affairs, so far as her military necessity is not thereby obstructed, while her military administration office organised there took charge of affairs relating to military necessities.

II. *Administrative Regulations in Manchuria.*

Based on the principles of the above preamble, the following regulations were issued:

Regulations Governing the Administration of Liaotung Garrisons.

CHAPTER I. General Principles.

ART. I. A chief military administrator and a certain number of military commissioners shall be appointed for the Headquarters of Liaotung Garrisons.

ART. II. The function of the chief military administrator shall be an additional duty for the chief of Liaotung Garrison Staff, and the required number of military commissioners shall be made up partly of higher civil officials and partly by additional duty imposed on staff officers.

ART. III. The chief military administrator, under the direction of the Commander-in-Chief of the Field, shall have general control over the military administration within the allotted domain, and superintend the military commissioners.

ART. IV. Military commissioners, under the direction of the chief military administrators, shall manage general affairs related to military administration.

ART. V. The domain of Liaotung Garrison shall be divided as follows:

1. The land leased by Russia.
2. The territory lying outside the land leased by Russia.

CHAPTER II. Military Administration of the Territory of the First Class.

ART. VI. The territory of the first class shall be divided into the following three districts, for each of which a military commissioner shall be appointed:

1. Port Arthur District.
2. Dalny District.
3. Chin-chow District.

ART. VII. A military commissioner shall exercise administrative measures necessary for promoting our military interests and maintaining good order and the welfare of the inhabitants within his own district.

ART. VIII. A military commissioner may issue, under the sanction of the Commander-in-Chief of the Field, necessary regulations, accompanied with retributory provisions for delinquents to the same, in order to execute his administrative function.

ART. IX. A military commissioner may exercise judicial rights over the inhabitants of his own district, either in accordance with the local law or referring to our Imperial code. Punishments, however, thus inflicted require the sanction of the Commander-in-Chief of the Field.

ART. X. A military commissioner may decide civil cases lodged by inhabitants of his own district, referring either to the local legal precedents or to our Imperial code.

ART. XI. A military commissioner shall superintend Imperial subjects, outside army, found in his own district, and criminals, if any, shall be handed over to the judge of the army, and a criminal belonging to the army shall be dealt with either by the commander of the regiment to which the criminal belongs or by the judge of the army.

ART. XII. A military commissioner has the right to impose taxes and public requisitions on Imperial, Chinese, and foreign subjects, dwelling within his own district, according to articles, rates, and procedure of tax, prescribed by the Commander-in-Chief of the Field.

ART. XIII. District No. 3 divides itself into five wards, each of which is to be headed by a wardmaster.

ART. XIV. A wardmaster, to which function an army officer or a high civil official is to be appointed, shall be assisted by a certain number of accessory officials.

ART. XV. A wardmaster shall execute, instructed by the military commissioner, the administrative affairs of his own ward; the station

and authority of a wardmaster shall be nominated by the military commissioner, the chief military administrator's wish being consulted.

ART. XVI. The chief military administrator's opinion being appealed to, and with reference to existing circumstances of the locality, a military commissioner shall institute self-government, represented either by a wardmaster or by a village headman, in the wards of the Ching-chow district and lower administrative sections, into which the other two districts are to be divided.

ART. XVII. A military commissioner and a wardmaster may appoint a certain number of councillors from the Chinese inhabitants of good character and education.

ART. XVIII. Councillors shall give their opinion on being consulted by the military commissioner or wardmaster.

Councillors may be engaged in managing affairs, if prompted thereto by the order of the military commissioner or wardmaster.

CHAPTER III. Military Administration of the Territory of the Second Class.

ART. XIX. In the territory of the second class, a military commissioner may be stationed, if necessary, wherever a Chinese Governmental office is to be found, or in any other important locality.

ART. XX. The military commissioner, appointed according to the provision of the preceding article, shall administer general military affairs in the locality allotted to him, depending on the Chinese local authorities for civil administration in so far as the same may not interfere with military necessity. The military commissioner at Ying-kow, however, shall act in conformity with regulations of the first class territory.

Supplementary Provisions.

ART. XXI. The above regulations shall be enforced from the 1st of January, in the 38th of Meiji.

ART. XXII. The territory under control of our Third Army is exempted from the enforcement of the above regulations.

ART. XXIII. A military commissioner, with a sanction thereto of the Commander-in-Chief of the Field, may levy administrative requisitions until the rates of taxes are prescribed according to the provision of the present regulations, Art. XII.

The Chief of Staff sent a note under date of Dec. 23, 1904, to the military administrator of Ying-kow, in which he says: "Though the extent of your authority as military administrator is determined by the Regulations for the Region of the First Order, according to the Rules of Administration by the Liao-tung Garrison, criminals among the Imperial Japanese sub-

jects outside of the military as well as Non-combatants attached to our army should be transferred to the Imperial Consul stationed at Ying-kow, and the cases of expulsion of those who would be injurious to peace and morals of the district should be treated likewise."

This Art. II. on the question of judicial procedure was settled upon after careful discussions of different views proposed by the Legal Investigation Committee of the Foreign Office, and those of the officials despatched to Ying-kow from the said Office as well as Dr. Ariga and others from the War Office.

Sect. II. The Results of Administration in the Occupied Territory of Manchuria.

An account is here given of the substance of the results obtained by the administration whose ground policy has been described above. The account is based upon the reports given by the Liaotung Garrison.

The administration of the occupied territory was carried out on different lines in accordance with the instruction of the Chief of the General Staff as well as the laws and usages of war on land. In the old Russian lease of Port Arthur, Dalny and Chin-chow, the power, legislative, judicial, as well as executive, was altogether secured in Japanese hands, as it had been by the Russians from their general policy of administration, and certain improvements or new arrangements were added to their policy by Japan from the more careful considerations of the circumstances, though only to the extent of Russian precedents. Ying-kow was an open port of free access to all nationalities, where consuls of different Powers were stationed. But since October, 1900, the Russian troops had occupied it and usurped its administration out of the hands of the Chinese Tao-tai. Judging from the military importance of the port, the Japanese Army succeeded to the Russian troops in maintaining its military occupation.

Outside the Russian lease the Russian Army had recognised official powers of the Chinese local authorities in the three

Manchurian provinces, and the common civil administration was altogether intrusted by Japan to these authorities, though the regulations necessitated from the military point of view, such as those relative to the public security and the supply of military provisions, etc., were carried out either in the name of these authorities or by their own effort under Japanese superintendence.

Not only did Russia get the territory covering Port Arthur, Dalny, and Chin-chow lease, where she had built fortifications, railways, houses, and the other establishments, but also she got a lease for the region of Liaotung and Fu-chow, where she built barracks and houses, as well as worked the mines. But the Japanese Army strictly observed the laws and usages of war on land in the territory they occupied, not failing to take proper measures towards immovable properties.

Having first investigated whether all realty was owned by the State or by private individuals, they were protected by Japan, and administered in accordance with the principles of usufruct, except those public properties which could be seized legally according to The Hague Convention relating to War on Land.

Not the least violation was committed upon those found to be private properties, except what was demanded by requisitions.

Especially those houses and other properties owned by Europeans which escaped damage by fire were protected in the most careful way. Not a few of the houses left by those foreigners were strictly blocked up against any depredation. Moreover, such grounds, houses, and establishments owned by the Russian Government were altogether put into the administration of the Paymasters of the Liaotung Garrison, who transferred such as could be furnished for military purposes into the custody of the respective commanders of the commissariat, and transferred those not needed in this capacity into the custody of the military administrations. Individuals or corporations could rent such buildings, on condition that they

should be given up to the army, if needed, upon reasonable notice. Such notice was agreed to be 7 days to individuals, and 30 days to corporations.

Something worthy of consideration has been done by way of the improvement of the physical condition of the occupied territory and by way of the protection given to the Chinese people resident there. The work of agriculture and that of education were the greatest among them. The Liaotung fields were generally bare and barren. When it was windy, dust and sand were blown up and almost choked the people, and in time of rain, the roads and fields were flooded. But they soon dried up, leaving not even a pool behind, because of utter absence of standing trees. As a necessary step to be taken in behalf of the sanitary condition of the occupying troops, three million saplings of pine, *quercus dentata*, peach, and *prunus Japonica* were imported from home and planted in Port Arthur, Dalny, and Chinchow. An excellent result was produced, with verdant trees and green forests scattered over the Manchurian plains, which was quite a new feature, unknown heretofore to the natives. The territory will thus be saved from dust and flood, and moreover be blessed with numerous springs of good drinking water.

When good order was gradually restored in the occupied territory and the various arrangements necessitated from a military point of view began to work satisfactorily, more positive measures were taken for instructing the people and for securing their lasting attachment to Japan. The very first step taken in this line was improvements given to the schools in different parts of the territory, and where there were no such institutions already existing new ones were opened. In these schools simple and elementary lessons were given to the young and the old. As many of the Chinese were desirous to learn Japanese, the language was made one of their lessons, and was taught by the Japanese teachers. Defrayment of their expenses was left to the discretion of the Chinese officers and people, whether by contributions or by imposts, all the other

forms of executive responsibilities being put upon the military administrators. Shortly after their establishment, they received a large number of applications, which indicated good prospects for the future.

Most of Japan's military administrators were those already familiar with the ways, customs, and language of the Chinese people, as they had made official tours through the country often before the war broke out. They showed to the people their dignity at one time and their tenderness at another as occasions occurred, and the Chinese people were delighted with the administration. Their continual applications for the privilege of contributing materials and money for the benefit of the Japanese Army of occupation proved more than anything else their good sentiments towards Japan.

Sect. III. Requisitions and Booty.

In order to illustrate the above statement, it is well to dwell upon some of the principal facts connected with the Japanese occupation of Manchuria.

(1) *Requisitions in Manchuria.*

Materials and service were requisitioned by Japan in Manchuria with military checks which were announced in the cities and towns to be exchanged for silver coins on a certain day.

This announcement was given by both the Japanese Army and the Chinese Authorities in different cities, and it settled the confidence of Chinese people. Later on they asked no silver coins in exchange for the checks, which had as easy a circulation in Manchuria as convertible paper.

While their confidence in the checks was thus confirmed, requisitions in Manchuria by the Japanese Army were performed in a new and a most fair method, that is, the standard prices in Manchuria were settled as fairly as possible by the Chinese Chamber of Commerce by the order of the Japanese Authorities and were placarded on the walls of towns and cities,

the Japanese Army making all the requisitions according to the rates announced therein. Compared with the method of requisition adopted in various wars as the common method in time of warfare, by which the belligerents would tyrannically settle the prices in general, irrespective of the economical condition of the market, it was by far the most civilised step taken by an occupying army.

(2) *Booty.*

The Disposition of the First Army in Manchuria relied upon the rules of International Law to put a definition on what are called the booty and disposed of that which was captured in battle according to the "Regulations of Booty."

The Regulations of Booty are as follows:

THE RULES OF BOOTY (the instruction of the Department of War).

ART. I. What is called the Booty in this rule are the commodities captured by troops in battle according to the Rules and Practice of War.

An officer who is called the commander in this rule is one who directly serves the Emperor or Commander-in-Chief.

ART. II. A commander is to send the booty to the Department of War, except when he receives the special order of the Headquarters.

The Minister of War manages the affairs referring to the arrangement and disposition of the said booty.

ART. III. In spite of the previous article, if there is any necessity regarding military affairs, a commander can be an arbitrator in disposing of booty taken by his soldiers, either to utilise or to destroy it.

An officer in command of a certain dependent body can do quite the same as above when he had not enough time to request the instruction of his superior (commander) with regard to the treatment of the booty taken by his men.

ART. IV. When any troop takes the booty, its commander must wait for the order of his superior, taking suitable means to arrange for it and to prevent its loss. But on some conditions he can send it directly to his superior officer.

ART. V. When booty is taken it must be reported to superiors, and a commander must report it to headquarters. When a commander utilises or destroys the booty, and when it is exhausted or lost, the treatment of it will be quite the same as above.

ART. VI. Headquarters, on the arrival of the preceding report, shall communicate it to the Department of War.

ART. VII. When the Department of War receives the spoils of war, it must be communicated to the Headquarters.

ART. VIII. What is called the headquarters in previous articles is the general staff, when the former are not yet founded.

Sect. IV. Private Properties of Russian Inhabitants.

The French Minister at Tokyo requested protection for the private property of Russian merchants who were detained in Port Arthur at the time of its capitulation to the Japanese Army. The following is the note:

Note.

Les négociants de Port Arthur, qui ont laissé dans la ville, lors de la capitulation, de grandes quantités de marchandises, invoquent le bénéfice de l'article 46 de l'annexe à la Convention de La Haye, d'après lequel la propriété privée doit être respectée et ne peut être confisques.

Le Ministre de France croit devoir, à la demande du Gouvernement Russe, faire part au Gouvernement Imperial du légitimé desir des interesses de ne pas voir leurs intérêts personnels et leur fortune privés lésés par les suites de la capitulation.

15 Fevrier, 1905.

The Japanese Government willingly accepted the request, and declared that the private properties of Russian subjects should be protected according to The Hague Convention.

It is gratifying to know that the author can relate the following instances as an evidence of the civilised actions of the Japanese Army:

The naval authorities had sent back those bills of exchange and some enclosed letters of the Russians to their former possessors, which were found in Chinese ships captured by the Imperial Navy when they were trying to get out from the blockaded Port Arthur.

The receipt of the French Minister to Japan is as follows:

Tokyo, le 10 Octobre, 1904.

Légation de la République Française au Japon.

Monsieur le Baron.

Votre Excellence a bien voulu m'adresser divers documents saisis à Port Arthur par l'autorité japonaise et dont un sujet russe dont le nom et la qualité me restent inconnus, embarqué sur une jonque chinoise, était détenteur.

J'ai exactement reçu les documents dont il sagit et dont voici la nomenclature:

No. 1. Chèque de 100 rubles.
No. 2. Chèque de 500 rubles.
No. 3. Chèque de 1300 rubles.
No. 4. 3 rubles.
No. 5. Chèque de 300 rubles.
No. 6. 2 rubles.
No. 7. Chèque de 700 rubles.
No. 8. 1 ruble et une photo.
No. 9. 15 rubles.
No. 10. 9 rubles 60 kopeks.
No. 11. Chèque de 200 rubles.
No. 12. 1 ruble.
No. 13. Chèque de 1000 rubles.
No. 14. Chèque de 300 rubles.
No. 15. 30 rubles.
No. 16. 21 rubles.
No. 17. Chèque de 3000 rubles.
No. 18. Chèque de 200 rubles.
No. 19. Chèque de 1100 rubles.
No. 20. 2 rubles.

En outre:

6 passports.
2 certificates.

J'ai l'honneur d'informer Votre Excellence que je ferai ce qui dépendra de moi pour que ces documents soient lemis aux ayants droit.

Veuillez agréer, Monsieur le Baron, les nouvelles assurances de ma très haute considération.

(Signed) J. HARMAND.

Son Excellence,
Monsieur le Baron Komura,
Ministre des Affaires Etrangères, Tokyo.

Sect. V. Protection of Historical and Religious Buildings, Hospitals and Others.

Protection given to the people's houses, and especially to historic buildings and to religious institutions.

The Japanese Army paid special attention to this subject, as is well illustrated in the following incident:

Some soldiers of the Twelfth Division one day accidentally burned down three dwelling houses. The authorities of the Japanese Army considered the damage thus sustained as a matter of course to be indemnified, and paid a reasonable sum in recompense to those who suffered from it. (Mr. Ninagawa, B.L., on General Kuroki's Army and International Law.)

Not only did the Japanese Army thus pay an indemnification for the houses burned, but also it prohibited trespassing on the people's houses, attaching importance to their own right of residence. Mr. Ninagawa has the following passage in his book in reference to the above:

"Special protection was given by our army to the Chinese women. Even when the people's houses were requisitioned for the needs of the army, the women's rooms were respected with the prohibition, 'No admittance to the inner chamber,' posted to warn the Japanese soldiers from entering there. Moreover, sentinels were placed before the doors of such rooms. Such a painstaking protection differed greatly from the attitude of the Russian troops towards the Chinese and Korean women, and it greatly attracted the heart of the Chinese people towards our cause."

It is a well-known fact that special care was taken by the Japanese Army in time of the bombardment of Mukden that the sanctity of the city be respected. The following is a report concerning the Japanese attitude:

A Peking despatch dated March 14, 1905, states that on being informed by Mr. Uchida, Japanese Minister to China, that Marshal Oyama, Commander-in-Chief of our Manchurian armies, had prohibited our troops from quartering within the city walls of Mukden in view of the sanctity of that city, the Empress Dowager expressed her high appreciation of the good-will of Japan. Marshal Oyama's action has created a good impression on the part of the Chinese Ministers of State and the people towards this country.

Again the Japanese Army protected the Christian Churches at Antung-hsien, Feng-huang-cheng with her gendarmes placed as guards over these buildings.

The protection of the hospital of the Countess Schouvaloff. Dated April 7, 1905, the following letter was sent by French Minister to Baron Komura:

MONSIEUR LE BARON:

Mon Gouvernement me prie de demander les bons offices de Votre Excellence afin d'être renseigné sur le sort de l'hopital de la comtesse Schouvaloff, qui était installé a Moukden et qui y est resté après l'évacuation de la ville par l'armée russe.

S. Ex. M. Delcassé exprime le désir que dans le cas ou cet hopital se trouverait encore à Moukden, il soit renvoyé à l'état major du commandant en chef de l'armée russe.

J'ai l'honneur de faire part a Votre Excellence de la communication dont il s'agit.

Veuillez agréer, Monsieur le Baron, les assurances de ma tres haute considération.

(Signé) J. HARMAND.

Son Excellence,
Le Baron Komura,
Ministre d'Affaires Etrangères, etc.

Thereupon the Japanese Government referred to the authorities at Port Arthur and investigated this hospital. Then the following report was sent in to the Japanese Military Minister from Japan's Army at Port Arthur:

The Hospital of Countess Schouvaloff was a part of Russian Red Cross Hospital, controlled by Mr. Guchukoff, Chief Manager of the Russian Red Cross Society, and was occupied by the Field Hospital of a certain one of our Legions. Its staff numbered 17 in all, and all of them finding it difficult to go back to their outpost, separated from Guchukoff and went to Yingkow, where they were delivered to the French Consul on the 28th of March. Materials under control of Mr. Guchukoff were allowed to be taken away with them, but they left some for use in the medical treatment of their sick and wounded and also of ours.

This report was sent by the Japanese Minister of War to the Foreign Minister, who despatched a letter in the above meaning to the French Minister on the 27th of April:

Sect. VI. The Protection of Citizens of the Other Powers in Manchuria.

A few examples are here given of the innumerable cases of the protection and investigation given and made respectively by the Japanese Government on behalf of subjects of other Powers in Manchuria.

(A) An example relating to American citizens.

The United States Ambassador to Tokyo communicated as follows:

Legation of the United States, Tokyo, Japan, May 13, 1904.

To His Excellency Baron Komura Jutaro,

His Imperial Japanese Majesty's Minister for Foreign Affairs.

MONSIEUR LE MINISTER:

I have the honour to submit to Your Excellency, herewith enclosed, copies of exchanged communications between the Department of State and the American Trading Company of New York, from which it will be seen that the latter expresses its anxiety as to the safety of its property in Newchwang, and requests the former to take such steps as it may deem advisable to insure protection and safeguarding of their interests and property, to which the Department of States replies "that the Government of the United States has assurance from both parties to the present war that the persons and property of neutral American citizens will be respected and, as far as possible, safeguarded, in the event of any such being found within the field of actual hostilities, and while maintaining an attitude of strict and impartial neutrality, it is not in a position to make any demand which might restrict or impair the offensive or defensive liberty of military action by either of the belligerents, especially at points so situated as to be or become of strategic importance in the course of the general plan of the campaign."

The above reply clearly indicates to Your Excellency the attitude which the government of the United States is disposed to assume in reliance upon the good faith of the government of Japan, as well as the government of Russia, in using all possible efforts to respect and safeguard legitimate interests of American citizens in the zone of operations. If there is anything therein which is not in full accord with the policy of the government of Japan, or if the confidence of my government is based upon a misconception, I would request that Your Excellency be so good as to make it known to me.

I take the advantage of this occasion to renew to Your Excellency the assurances of my highest consideration.

(Signed) LLOYD C. GRISCOM.

Enclosure as above noted.

American Trading Company, New York, April 2nd, 1904.

HON. JOHN HAY,

Secretary of State, etc., Washington, D. C.

DEAR SIR:

The American Trading Company is a corporation duly organised and existing under the laws of the State of Maine, having a principal office at 25 Broad Street, in this city, and has been engaged for many years in business between this country and various foreign countries, including China and Japan. It has an agency, which was established many years ago, at Newchwang, in Manchuria, where, in accordance with the rights granted by the treaty with China, it has purchased and owns certain real estate, on which its offices and warehouses are situated, and it has been continuously engaged in business there for several years.

We enclose herewith a list of property owned by us, in the possession of our agency at Newchwang, at the date of our last report from there, which, taken at its fair value, amounts altogether to the sum of $77,800.97; and we respectfully request that your Department will take such steps as may be proper to insure the protection and safeguarding of our interests and property at that place, and to obtain for us from the proper government adequate indemnity for any loss or damage thereto which may result from the action of the belligerent governments or otherwise.

Yours respectfully,

AMERICAN TRADING COMPANY,

JAMES R. MORSE, *President.*

American Trading Company, New York, March 30th, 1904.

Memo. of American Trading Company. Value of Property on Hand at its Agency at Newchwang.

Cash	$3,195.72
Real Estate and Buildings	20,000.00
Cargo boat (Lighter)	571.78
Office Fixtures, Codes, etc.	1,831.56
Merchandise: Piece Goods	30,969.39
Cigarettes	2,403.51
Piping	1,731.75
Nails	1,040.38
Wines and Liquors	2,040.26
Coal	1,233.34
Galvanised Iron	2,282.80
Tin Basins	1,600.92
Underwear	4,125.03
Sundries	4,774.53
	$77,800.97

Department of State, Washington, D. C., April 6, 1904.

THE AMERICAN TRADING COMPANY,
Broad Exchange Building, New York City.

GENTLEMEN:

I have to acknowledge the receipt of your letter of the 2nd instant, expressing apprehension of injury to your property at Newchwang, Manchuria, and asking this government to take steps to insure its protection and obtain from the proper government adequate indemnity for any loss or damage which may result from the action of the belligerent governments or otherwise.

In reply I have to say that the Government of the United States has assurance from both the parties to the present war that the persons and property of neutral American citizens will be respected and, as far as possible, safeguarded in the event of any such being found within the field of actual hostilities. The United States Government, maintaining the attitude of strict and impartial neutrality, is not in a position to make any demand which might restrict or impair the offensive or defensive liberty of military action by either of the belligerents, especially at points so situated as to be or become of strategic importance in the course of the general plan of the campaign.

If the interests of property of innocent neutrals should unfortunately suffer through the hazards of war, the remedy of the neutral government, acting on behalf of its neutrals, lies in the presentation of the injuries suffered and fixation of the responsibility therefor. The ascertainment and adjustment of such matters is frequently a question for arbitration in some form by a mixed commission.

I am, gentlemen, your obedient servant,

(Signed) JOHN HAY.

On May 20, 1904, the Imperial Government answered that they would respect and safeguard the persons and properties of American citizens as far as the liberty of military and strategic importance in the course of the present war will permit.

(B) *An example relating to British subjects.*

Fear was universally felt that the Chinese population might become a source of danger to the lives and properties of foreign subjects or citizens in Newchwang and other cities in Manchuria.

On the 22nd of March, 1904, the British minister at Tokyo requested that the lives and properties of British subjects might be safeguarded by such measures as the circumstances would permit should Newchwang be occupied by Japanese troops.

To this Japan answered on the 30th of March that the lives and properties of British subjects would be safeguarded as far as possible at the time of the occupation of that part of Manchuria by Japanese troops.

(C) *An example relating to Austrian subjects.*

The Austria-Hungarian Consul at Tientsin wrote to our consul there, Ijuin, the following letter:

Imp. & Roy. Consulate for Austria-Hungary.
Tientsin, 13th Feb., 1905.

SIR AND DEAR COLLEAGUE:

I am informed by the Austro-Hungarian Vice-Consulate in Chefoo that on the 6th of November, 1904, the Austrian subject J. J. Mascha entered the 8th Russian Reserve Field Hospital in Port Arthur, suffering from typhoid fever, where he died on or about the 6th December, 1904.

When he entered the hospital the following papers were deposited at the administration of the said hospital:

1. Post-office Savings Bank No. 8473, showing a deposit of 200 rubles paid in the 6th July, 1904.
2. Cheque No. 1944 of the Russo-Chinese Bank, dated 31st August, 1904, for 230 rubles in favour of J. J. Mascha.
3. About 70 rubles in cash; and
4. Different documents of the deceased.

I beg to request you to be good enough to communicate with the proper authorities about this matter and to secure the effects of the deceased, and to let me have them.

I have the honour to be, sir and dear colleague,
Your obedient servant,
(Signed) K. BERNANER,
Austro-Hungarian Acting Consul.

H. Ijuin, Esquire,
Consul-General for Japan, Tientsin.

After investigation the Imperial Government handed over certain property of the deceased to his family.

(D) *An example relating to Italian subjects.*

The Italian correspondence arose over the disappearance of two Italian subjects. The Japanese Government made diligent though fruitless inquiry, and had the missing men come under Japanese protection, their interests would have been guarded.

On the 19th of March, 1905, the Italian Minister at Tokyo wrote to the Japanese Minister of Foreign Affairs:

Ra. Legatione d'Italia,
Tokio.

Tokio, le 19 Mars, 1905.

MONSIEUR LE MINISTRE:

Je viens de recevoir de Rome un télégromme par lequel Son Excellence le Ministre des Affaires Etrangères, appelant mon attention sur un télégramme du Quartier Général du Général Oku, d'après lequel deux négociants italiens auraient été tués à Mukden, me charge de m'adresser au Gouvernement Impérial afin d'avoir la confirmation de la dite nouvelle et pour le prier de me procurer des informations ultérieures au sujet.

En portant ce qui précède à Votre connaissance, j'ai l'honneur d'avoir recours à la courtoisie habituelle de Votre Excellence avec la prière de vouloir bien me mettre à même de donner une réponse télégraphique à mon Gouvernement à propos de la confirmation de la susdite nouvelle et des informations qui m'ont été demandés.

Des à présent j'ai l'honneur de présenter à Votre Excellence mes vifs remerciments et en même temps je saisie cette occasion pour vous renouveler, Monsieur le Ministre, les assurances de ma plus haute considération.

G. L. VINCI.

A Son Excellence,
Monsieur le Baron Komura,
Ministre des Affaires Etrangères, Tokio.

The Japanese Government immediately communicated the matter to their military authorities in Manchuria. As the result of this inquiry, it became known that the Italians who were said to have died in battle were ill treated by the Russian army and carried towards the north.

(E) *An example relating to the Hollanders.*

The Dutch Minister to Japan sent to the Bureau for information in Tokyo the following communication:

Au Bureau de l'État Major-général,
Bureau des renseignements, Tokyo.

Priere d'obtenir des renseignements sur les sœurs de charité, Moltzer et Jacobson; ainsi que sur les médecins, Lieven et Riesenkamph, faisant

tous parti de l'ambulance Russo-Hollandaise qui a du se trouver a Moukden lors de la récente bataille.

Légation Royale des Pays-Bas.

Tokyo, le 25 Mars, 1905.

To this, the Japanese Government, after investigation, answered as follows:

April 6, 1905.

To the Dutch Minister to Japan.

MONSIEUR LE MINISTER:

I have the honour to inform Your Excellency that I introduced, as soon as possible, to the authorities Your Excellency's request, on the 25th of the last month, to be reported the tidings of the Russo-Dutch female nurses Moltzer and Jacobson, and physicians Lieven and Riesenkamph, in service of the hospital of war. The authorities replied that our Imperial Army sent them to the line of the Russian pickets and handed them over to the Russian Army.

MINISTER.

(F) *Protection of the Chinese in Manchuria.*

As a result of the Russo-Japanese War the Chinese people in Manchuria and some other places suffered greatly from cold and hunger. So the Imperial Government protected them individually.

Here are some important facts about it:

a. The Relief of the Chinese People in Mukden.

On Dec. 17, 1904, the Japanese Chargé d'Affaires *ad interim* in Peking reported that it was impossible to describe the pitiful condition of the poor people in Mukden, among whom 200 or 300 men were dying of cold and hunger every day, they having no clothes to put on, and that the Chinese Department of Foreign Affairs earnestly requested him to get the consent of the Japanese Imperial Government to distribute 10,000 of 48,000 pieces of winter garments among the sufferers at Haitcheng and Kaiping by way of Newchwang, and to deliver the rest, 38,000 pieces, for the purpose of relieving those at Mukden, to some officers sent to Shinming-tung by the head administrator of Mukden.

The Japanese Imperial Government consulted with the proper authorities on this request, and permitted the sufferers

of Haitcheng and Kaiping and their neighbourhood to be supplied with grain and clothes by way of Yinkow. But as the Quarters of Mukden were occupied by the enemy, the Japanese Government prohibited all transportations thereto.

b. The Sending of Relief Money from the Chinese Imperial Palace to the Mukden Local Government.

As to the sending of the relief money, 1000 dols. on March 25, 1905, from the Chinese Imperial Palace to the poor people of Mukden, the Chinese Department of Foreign Affairs requested Mr. Uchida, the Japanese Ambassador to China, to let the bearer of that money pass safely on his way. The Imperial Japanese Government informed the Manchurian Army to give whatever orders necessary to accomplish this.

c. The Permission for the Transportation of Salt to Shinming-tung.

With regard to this, the Japanese Ambassador Uchida informed as follows:

"On the 17th of March, 1905, Yuan-shih-kai and Huchuen-fen, asked my consent to the transportation of the salt to Chin-chow, Shinming-tung, and Fakumen, annually sent there for the subsistence of native population.

"He thinks that there is no danger of being captured by Russians. As it appears extremely necessary to the lives of the Chinese, it might be consented to the transport under certain restriction and superintendence."

The Japanese Government gave their consent for the sake of the Chinese people.

d. The Case of the Conveyance of Provisions by Sea from Chefoo to Antung-hsien.

The despatch from Mr. Mizuno, the Japanese Consul at Chefoo, runs as follows:

The Governor of Shantung telegraphs to the Chefoo Customs that he received a despatch from General Tseng to the

effect that the General received petitions from Chinese merchants at Antung saying that no cargo or provisions arrived from Chefoo. Provisions running short there, and that although contraband of war could not be allowed to be exported from Chefoo for the sphere of fighting, yet provisions absolutely necessary for subsistence of natives must be arranged to be sent. Taotai asked whether it would be permissible to export cargoes and provisions by junks from Chefoo to the Yalu under certificate of Commissioner of Customs.

The Japanese Government permitted this on the condition that the packet boat should not call at any port on the way from Chefoo to Antung-hsien.

PART III.

LAWS OF NAVAL WARFARE.

CHAPTER I.

THE SINKING OF MERCHANTMEN.

Now to proceed to the chapter on the sinking of merchantmen. At the very outset, the reader's attention should be directed to the glaring fact that Russian warships were guilty of sinking merchantmen, and among their victims not only Japanese, but neutral ships are to be reckoned. The author is firmly convinced of the unjustifiability of the conduct of the Russians, who freely fired at ships or torpedoed them, even in cases where these cruel measures were by no means required. Before the criticism is set forth, the data on the point in question will be in place.

By way of general introduction, the full list of merchantmen, both Japanese and foreign, searched, visited, captured, and sunk by Russian warships in the neighbouring seas of Japan is here published. It is based on the results of an investigation by the Japanese Department of Communications:

LIST OF SHIPS SEARCHED, VISITED, CAPTURED, AND BOMBARDED BY RUSSIAN WARSHIPS.

	Nationality.	Kind of Vessels.	Number.	Tonnage.
Total Number and Tonnage.	Japan.	Steamships....	16	26,342
		Sailing ships..	16	2,059
	Foreign.	Steamships....	15	51,859
		Sailing ships..	0	0

THE ABOVE CLASSIFIED.

	Nationality.	Kind of Vessels.	Number.	Tonnage.
Sunk.	Japan.	Steamships....	9	15,590
		Sailing ships...	12	1,498
	Foreign.	Steamships....	6	18,757
		Sailing ships...	0	0
Captured.	Japan.	Steamships....	0	0
		Sailing ships...	3	412
	Foreign.	Steamships....	3	11,633
		Sailing ships...	0	0
Bombarded, but not sunk.	Japan.	Steamships....	5	10,367
		Sailing ships...	0	0
	Foreign.	Steamships....	0	0
		Sailing ships...	0	0
Searched.	Japan.	Steamships....	2	385
		Sailing ships...	2	19
	Foreign.	Steamships....	0	0
		Sailing ships...	0	0
Released.	Japan.	Steamships....	0	0
		Sailing ships...	0	0
	Foreign.	Steamships....	6	21,469
		Sailing ships...	0	0
Recaptured.	Japan.	Steamships....	0	0
		Sailing ships...	1	130
	Foreign.	Steamships....	0	0
		Sailing ships...	0	0
Whereabouts unknown.	Japan.	Steamships....	0	0
		Sailing ships...	2	333
	Foreign.	Steamships....	3	14,927
		Sailing ships...	0	0

The author believes that besides the above there were many home and foreign ships examined, but he relied upon the list made by the Department of Communications only.

Further, a list is inserted below, containing the names, owners, and localities of disaster of the principal ships attacked by the Vladivostock or Port Arthur Squadron, etc.:

Name.	Date and Place.	Disaster.	Dead, Wounded and Prisoners.	Cargo and Damages.	Total Tonnage.	Owners.
Ships damaged in the first invasion of the Russian Vladivostock Squadron.						
Nakonoura	February 11, 1904. Far off the Cape of Henashi.	Sunk.	2 dead and 41 prisoners, the latter being sent back to Nagasaki.	Rice and straw-rope. All damages summed up, including ship and her implements, 180,-213 yen.	1,084	Minanzima.
Zensho	"	Bombarded, but not damaged.	0	Rice and miscellaneous articles. Partly being thrown out.	319	Miyazaki.
Ships damaged in the second invasion of the Russian Vladivostock Squadron.						
Haginoura	April 25, 1904. Far off Genzan.	Sunk.	No dead, no wounded, 4 prisoners.	Fish. Wholly sunk.	219	Tanaka.
Kinshu	"	"	Naval Service Ship.		3,853	Nippon Yusen. Kabushiki Kwaisla.
Goyo	"	"	0	Fish. Wholly sunk.	601	Hori.

VLADIVOSTOCK OR PORT ARTHUR SQUADRON, ETC.—*Continued.*

Name.	Date and Place.	Disaster.	Dead, Wounded and Prisoners.	Cargo and Damages.	Total Tonnage.	Owners.
Ships damaged in the third invasion of the Russian Vladivostock Squadron.						
Wugo	June 15, 1904. Sea of Genkai.	Bombarded, not damaged.	0		2,300	Akita.
Fuyo	"	"	0		1,250	Harada.
Izumi	"	Sunk.	Military service ship.		3,229	Nippon Yusen Kwaisha.
Hitachi	June 15, 1904. Near Island of Oki.	"	"		6,175	"
Sado	"	Bombarded.	"		6,226	"
Ansei	June 16, 1904. Far off Okushir Island.	Sunk.	0	Fish and rice. Wholly sunk. All damages, including ship, her implements and cargo, 28,604 yen and 50 sen.	105	Habaki.
Hachiman	"	"	0	All damages, including ship, her implements and cargo, 30,295 yen.	136	Wukon.
Hotoku	June 16, 1904. Far off Oshima (Yezo).	Examined and Released.	0	Fish. No damage.	19	Miwura.

Seiyei	June 17, 1904. Far off Okushiri Island.	Sunk.	0	Fish, wholly sunk. All damages including ship, her implements and cargo, 11,600 yen.	69	Miyaki.
Hako	June 18, 1904. Far off Matsumai.	Examined and Released.	0	Fish and other goods. No damage.	238	Yamamoto.
Koun	June 30, 1904. Port Genzan.	Sunk.	0		36	Tanaka.
Seisho	"	"	0	Fishing implements and necessities. Wholly sunk; damages, 14,653 yen.	122	Hamane.
Allanton (British)	June 16, 1904. Far off Maitsuru.	Captured.	Unknown.	Coal; confiscated.	4,253	W. R. Co.
Cheltenham (British)	July 2 (?), 1904. Far off Fusan.	"	"	Sleeper. Damages unknown.	3,741	Umeura.
Ships damaged in the fourth invasion of the Russian Vladivostock Squadron.						
Takashima	July 20, 1904. Far off Cape Yesan.	Sunk.	About 6, unknown.	Miscellaneous articles and gunpowder, wholly sunk.	318	Tokyo wau Kisen Kwaisha.
Kiodowunyu	"	Examined and Released.	0	Sea-weed and miscellaneous articles. No damages.	147	Amagasaki.

VLADIVOSTOCK OR PORT ARTHUR SQUADRON, ETC.—*Continued.*

NAME.	Date and Place.	Disaster.	Dead, Wounded and Prisoners.	Cargo and Damages.	Total Tonnage.	Owners.
Ships damaged in the fourth invasion.—*Continued.*						
Kiho	July 20, 1904. Far off Cape Yesan.	Sunk.	No dead, no wounded, 11 prisoners.	Salt, straw-mats and sauce. Wholly sunk.	140	Horibe.
Hoksei II	July 20, 1904. Far off Saru (Yezo).	"	0	Sea-weed, fish and fish oil. Wholly sunk.	91	Ishizuka.
Jizai	July 24, 1904. Far off Tokosuka.	"	No dead, no wounded, 5 prisoners.	Salt. Wholly sunk. Damages, including ship and her implements and cargo, 17,000 yen.	199	Amaha.
Fukuji	"	"	No dead, no wounded, 7 prisoners.	Salt. Wholly sunk. Damages, 2,800 yen.	130	Ota.
Samara (British)	July 20, 1904. Far off Cape Yesan.	Examined and Released.	0	0	2,831	Hokkaido Tanko Tetsudo Kewaisha.
Knight Commande (British)	July 24, 1904. Near Oshima (Izu).	Sunk.	No dead, no wounded, captain and crew became prisoners.	Materials of railway. Wholly sunk.	4,306	English Knight Co.
Tsinan (British)	July 24, 1904. Sea of Yenshu.	Examined and Released.	0	Sugar and rice. No damage.	2,269	Chinese Navigation Company.

Carcao (British).....	Unknown.	Released.	Unknown.	Unknown.	6,748	Ocean Steamship Company.
Thea (German).....	July 25, 1904. Far off Nashima.	Sunk.	No dead, no wounded, 44 prisoners; classified, 24 Japanese, 16 Chinese, and 4 Germans.	Fish and fish oil. Wholly sunk.	1,613	Oguri.
Arabia (German).....	July 24, 1904. Southeastern shore.	Captured and released.	Unknown.	Materials of railroad and flour: 30,000 barrels damaged.	4,438	P. O. Company.
Ships damaged in the fifth invasion of the Russian Vladivostock Squadron.						
Hachiman the III.....	May 5, 1905. Far off Cape Shiraito	Sunk.	Prisoner, captain only.	Salt. Wholly sunk.	204	Wukon.
Taishin.....	May 5, 1905. Far off the lighthouse of Cape Komoi	Captured and recaptured.	7 prisoners and a boy, whose age is fifteen.	Rice and miscellaneous corn.	130	Kinoshita.
Ships damaged by the Russian Port Arthur Squadron.						
Hanyei.....	March 26, 1904. Near Miao-tao Island	Sunk.	No dead, no wounded; prisoners, 10 Japanese, 7 Chinese, captain and 2 sailors taking refuge in Chefoo.		75	Osaka Asahi Shinbun.
Hipsan (British).....	July 15, 1904. Near Pigeon Bay.	"	Unknown, majority of passengers and crew drowned.		1,659	Indo-Chinese Navigation Company.

VLADIVOSTOCK OR PORT ARTHUR SQUADRON, ETC.—*Continued.*

NAME.	Date and Place.	Disaster.	Dead, Wounded and Prisoners.	Cargo and Damages.	Total Tonnage.	Owners.
Ships damaged in the invasion by Russian Baltic Fleet, and others.						
Oscar II. (Norwegian).....	May 19, 1905. Batare Strait.	Examined and released.	0		3,060	Mitsui Bussan Gomei Kwaisha.
Old Hamia (British).....		Captured.	Captain, mate and two others imprisoned, 25 persons whereabouts unknown.	Petroleum.	3,639	Manchester and Salhode Company.
Tetatos (German).....	May 28, 1905. Far off Shantung Prov.	Sunk.	Members imprisoned; to the *Lyon.*		2,409	Osaka Shosen Kwaisha.
Siraanam (British).....	June 3, 1905. East of Shanghai.	Examined and sunk.		Cotton, peas and antimony.	2,123	Mitsui Bussan Gomei Kwaisha.
St. Kilda (British).....	June 4, 1905. Northeast of Hongkong.	Sunk.	Members imprisoned; to the *Dnieper.*	Rice and provision.	3,518	English Foreign Steamship Company.
Ikhona.....	June 5, 1905. North of Hongkong.	"			5,252	British India Navigation Company.

Keysho	August 3, 1905. Far off Kiojo.	Bombarded, no damages.	Captain and one of the crew died; 2 wounded.		272	
Kamo	August 7, 1904. West shore of Saghalien.	Captured.	10 prisoners, afterwards being sent back.		119	Mito.
Kioichi	August 16, 1904. Okhotsk Sea.	Sunk.	Captain only sent back; all others unknown.		73	Tomiwi.
Hakutsu	June 17, 1904. En route from Yakashiri to Osaka.	Captured and confiscated.	12 members being sent back.	Fish and fish oil. Damages, including ship, 38,197 yen, 485 sen.	211	Nisino.
Vaye	May 3, 1905. After sailing out Yakashiri, whereabouts unknown.	Unknown.	10 members; prisoners.	Rice, 233 pio (Japanese bags).	122	Hiromi.
Hokusei	May 10, 1905. Far off Matsumai.	Sunk.	Prisoners: 25 Japanese, 6 foreigners.	Fishing ship. Damages, 36,911 yen, 6 sen.	129	Ogawa.
Koyei	"	"	28 members, prisoners.	Fishing ship. Damages, including ship, her implements and fishing implements, 31,309 yen, 30 sen.	100	Kato.
Izumi	August 23, 1905. Far off Argan.	Captured.	28 prisoners, afterwards being sent back.	Salt, 750 pio, rice 55 pio; miscellaneous articles, 20 or 30.	82	Osaka.

Sect. I. The Sinking of Japanese Vessels.

I. *The Sinking of the Nakonoura Maru.*

(The first raid of the Vladivostock Squadron.)

The sinking of the *Nakonoura Maru* was the first instance of attack made by the Vladivostock Squadron against a Japanese merchant ship or of a third Power. Details of the disaster are well furnished by the following report:

Details of the Nakonoura Maru Disaster.

The details of the *Nakonoura Maru* disaster, furnished by her captain, who, together with his crew, was brought home on the 22nd inst., are as follows:

Caught and Fired on by Russian Warships.

The *Nakonoura Maru* left Sakata for Otaru on the 10th inst., at 10.10 a.m., carrying besides the cargo, four passengers, two men and two women. At 6.03 o'clock the next morning, she found herself five knots off the Nyudōsaki lighthouse, and at 10 o'clock reached a point 10 knots distant from Cape Henashi. At about half-past eleven four warships were descried some four knots off the port side. At that time, a thick fog covered the surrounding sea, a strong southeasterly wind was blowing, and the waves ran high, so that the newcomers could not be identified. The nearest port of refuge left to the choice of the helpless steamer was 12 knots distant, which fact rendered void all hope of escape from the Russian warships, assuming them to be such. All the crew were gathered upon the upper deck and the vessel boldly took her course onward. She thus drew nearer and nearer the warships until at length it became clear that they were actually Russian. Abating her speed, the *Nakonoura Maru* kept sailing on, when one of the Muscovite warships fired a blank charge. At the same time she successively signalled to the Japanese steamer, "Come parallel with us, we shall not forgive you"; "Quickly abandon your ship"; "Leave your ship within 15 minutes." The captain of the *Nakonoura Maru* immediately ordered the boats to be lowered, at the same time signalling a request for relief if such could be rendered. The Russian vessel, which had then passed the Japanese steamer, veered so as to face the latter and signalled the reply, "We are going to rescue you."

This signal given, all the Russian warships opened fire on the helpless steamer which they surrounded. Boats were lowered from the port side of the *Nakonoura Maru*, and the passengers and half the crew rowed out in them. But the sea being very rough, the vessel

was veered so as to bring the starboard side to leeward, thus facilitating the lowering of boats from that side. During this process, the ship was struck by several shells by which Tsuneyemon Murata and another sailor were hit, and falling into the sea, were drowned. The rest, far from being able to rescue their comrades, barely succeeded in embarking in the boats. The incident occupying but a moment, all the ship's records, not to speak of the personal effects of individuals, were necessarily lost. The boats, leaving the sinking ship behind them, were going to make for the shore, when the armoured cruisers *Rossia* and *Gromoboi* steamed forward and fired on the little craft from both sides. Flight being thus rendered impossible, all the boats turned round and rowed up to the Russian warships, from which ropes and rope ladders were let down.

Rescued Japanese Aboard the Russian Ships.

All the sailors and passengers were thus taken aboard the Russian warships, and as the result of an examination of their personal belongings, which followed, were all relieved of their money, watches, or whatever valuables they had with them. An hour later, the *Nakonoura Maru* foundered stern downwards. The steamer *Zensho Maru* appeared to the crew of the unfortunate vessel to be placed in a similar situation, but they could not know what had become of her. As to the treatment of the rescued Japanese, four passengers were given one cabin, while the captain and the crew, 37 in number, were placed in three separate cabins. All the cabins were locked and sentineled, and nobody was allowed out except on unavoidable occasions. They were given brown bread to eat and tea to drink.

About 3 o'clock in the afternoon of the same day, *i. e.*, the 10th inst., the Russian warships sailed away from the scene of the disaster, first taking a W.N.W. course and afterwards S.S.W. The squadron continued its cruise in the Sea of Japan till the 14th inst. at 4 p.m., when it returned to Vladivostock. The next day, after breakfast, all the Japanese were given hats, overcoats, and shoes and then ordered to land at 10 a.m.

On Land.

On land they were put, 41 in all, into a prison-like room promiscuously, and locked up. They were even left without tiffin and were made unbearably sick by the offensive odour that filled the room. Unexpectedly, however, at a little past two in the afternoon an official came and summoned all the inmates and informed them that they would be sent back to Nagasaki by the German steamer *Stolberg* leaving Vladivostock at 3 p.m.

Departure for Home.

The steamer, however, postponed her departure owing to the darkness, and it was not until the 19th inst., at 10 a.m., that she left for Japan.

The validity of the above report may be established by referring to the report sent to the Lighthouse Bureau by the master of the *Zensho Maru*, which was at the scene and succeeded in escaping:

A Report of the Master of the Zensho Maru.

Forwarded to the Bureau of Administration from Mr. Kakichi Uchida, President of the Lighthouse Bureau.

1. Appellation: The S. S. *Zensho Maru.*

2. Registered Port: Fukuyama, Matsumaye Gori, Woshima Province.

3. Owner: Miyazaki.

4. The date and place of the disaster: E. Long. 139° 38′, N. Lat. 40° 45′ 30″.

On Feb. 10, 1904, at 11 p.m., the *Zensho Maru* left Port Sakata, Ugo Province, bound directly for Otaru, laden with 500 packages of rice, 89 packages of miscellaneous articles, and 17 passengers. At 10.40 the next morning, she found herself about 7 knots off Cape Henashi, and sighted four warships on her port bow. The *Nakonoura Maru* was then some distance ahead of the *Zensho Maru*, although they started simultaneously. At 11.20 a.m., the *Nakonoura Maru* ceased moving, and the nationality of the warships were fully discerned. Then the men-of-war fired at our ship, but the shot fell short by about 40 *ken* on the port side, which we took for a signal ordering us to stop, and ceased moving. Shots were also fired at the *Nakonoura Maru*, which at noon, being struck in the stern, sank in ten minutes. Then the three Russian warships discharged three shells, thrice going around us. (Thus far they did not deign to give us any merchant ship signals, which must throw grave responsibility upon them.) A little past 1 p.m., taking advantage of a squall of wind and rain, which by 2.25 p.m. brought a high enough sea to cause the enemy to miss us, we managed successfully to make our escape under full speed. On the 12th, at 1.55 p.m., our ship found herself duly at Hakodate.

The master of the *Nakonoura Maru* was sent back on board a German steamer, the following being the report concerned:

February 22, 1904.

MINISTER FOR FOREIGN AFFAIRS:

The crew of the *Nakonoura Maru*, which was sunk off Tsugaru, with the exception of two, came duly here on board the German S. S. *Stalberg*, which has just arrived from Vladivostock, and are receiving their sanitary examination. In the disastrous incident, two of the crew, by name Tsuneyemon Mochida and Sakujiro Murota, were thrown overboard and drowned.

GOVERNOR OF NAGASAKI PREFECTURE.

II. *The Sinking of the Goyo Maru and the Haginoura Maru.*

(By the second raid of the Vladivostock Squadron.)

The Vladivostock Squadron, which sunk the *Kinshu Maru*, took the same measure with the *Haginoura Maru* and *Goyo Maru*, on April 25, 1904.

A. *The Sinking of the Goyo Maru.*

The following letter from a witness, an Englishman, at Gensan, contains particulars of the sinking of the *Goyo Maru*:

Wonsan, 7 May, 1904.

SIR:

I have the honour to acknowledge the receipt of your despatch No. I., dated the 5th instant, requesting me to inform you of such facts as came under my notice concerning the sinking of the Japanese S. S. *Goyo Maru* by Russian torpedo boats in this harbour on the 25th ultimo. I beg to state as follows:

At about 11.30 a.m. (Wonsan time), on the 25th of April last, I observed two torpedo boats flying the Russian ensign in the harbour. Shortly afterwards a boat put off from one of the torpedo boats and was rowed to the *Goyo Maru*, which was lying at anchor about three and a half cables' length from the Customs jetty. The boat's crew boarded the steamer, and within a few minutes the ship's crew and passengers jumped hurriedly over the stern of the vessel into a ship's boat that was lying in the water. All the crew and passengers landed safely, being assisted by a boat sent by the Customs. At about noon the Russian boat's crew returned to the torpedo boat, handed on board what seemed to be papers, and then hoisted their boat. About ten minutes later (12.10 p.m.) a torpedo was fired from one of the torpedo boats, striking the *Goyo Maru*, which keeled over on her starboard side and slowly sank.

The preceding I personally observed, partly with the aid of a telescope. Of what happened on board I have no personal knowledge, but I conclude that little or no time was allowed to enable the passengers or crew to save their personal effects, as nothing was brought on shore except a few bundles of clothing.

(Signed)

From the above, the lawlessness of the Russian attitude in this instance may be easily imagined.

A report was sent in by Siu-ko-bo, Superintendent Tokugen, Korea, concerning the same incident.

On April 25, Russian torpedo boats unexpectedly appeared in the harbour and fired at and sank the Japanese merchant ship *Goyo Maru*, as I personally witnessed from a neighbouring hill. Informations agree that the Russians resorted to cruel measures without any proper inspection of the ship's freight, after having ordered the crew and passengers, both Japanese and Korean, to leave the ship.

B. *The Sinking of the Haginoura Maru.*

As for the *Haginoura Maru*, which left Joshin for Fusan on April 25, and whose fate became obscure, later facts proved that she also shared the same lot as the *Kinshiu Maru* near the coast of the Kamikiantai, and that her crew were made prisoners. Thereupon on the 22nd of May, 1904, our government made a request through the American Government for their release, saying that "the said ship, which had been engaging in the coast trade of Korea, was of a nature quite different from that of the *Kinshiu Maru*, having no relation whatever with the Japanese Government, so that her crew should be released, as in the case of the *Nakonoura Maru*."

As a result of the request made by Mr. Takahira to the American Government, intructions were forwarded to the American Ambassador to Russia. The response was as follows:

American Embassy, St. Petersburg, June 23, 1904.

YOUR EXCELLENCY:

In accordance with instructions received by telegraph from my Government, at the instance of the Japanese Minister in Washington, I transmitted a request to the Russian Government concerning the

release of the crew of the merchant steamer *Haginoura Maru* and have now received a note from the Imperial Ministry for Foreign Affairs, a copy of which I have the honour to append herewith.

I am, with high regard,

Your obedient servant,

(Signed) ROBERT S. MCCORMICK.

His Excellency Mr. Inouye,
Imperial Japanese Minister at Berlin, etc.

(Enclosure)

Ministre des Affaires Etrangères. Premier Department.

MONSIEUR L'AMBASSADEUR:

Ayant transmis par telegraphe au Lieutenant de sa Majeste l'Empereur en Extrême Orient le contenue de la note de Votre Excellence au 12–25 mai, Je ni empress de vous informer que l'aide de camp général Alexiew ne juge pas possible, pour des considérations se rapportant a l'étate de guerre, le renvoi au Japon des 15 japonaise, qui se trauvoint sur le vapeur *Haginoura Maru* par la flotte russe.

(Signé)

S. E. McCormack,
Ambassadeur des États Unis.

III. *The Sinking of the Kinshiu Maru.*

(By the third raid of the Vladivostock Squadron.)

On April 25, 1904, the Vladivostock Squadron, on its second appearance, sank the Japanese merchantmen *Haginoura Maru* and *Goyo Maru*, and besides the *Kinshiu Maru*, a military transport.

The report of the Russian Admiral is as follows:

St. Petersburg, April 29.—The details of Rear-Admiral Yeszen's raid show that it was entirely successful. The Admiral safely brought back his ships to Vladivostock after inflicting material and moral damage on the enemy. The cruise was most daring. The enemy's squadron was known to be in proximity, which necessitated the prompt sinking of the Japanese transport *Kinshiu Maru*.

The ability of Admiral Yeszen to reach Gensan, 300 miles away, in twenty-two hours, as they did on the second expedition, is certain to compel the Japanese to be on their guard.

The squadron, consisting of the armoured cruisers *Rossia*, *Rurik* and *Gromoboi* and the protected cruiser *Bogatyr*, put to sea at daybreak April 23rd. The *Rurik* returned the following day, but the

others proceeded to Gensan, Korea, and hove to off the town during the morning of April 25th, about five miles from the entrance of the bay. Admiral Yeszen sent into the bay two torpedo boats, commanded by Lieutenant Maximoff. As they ran in towards the shore they found the Japanese trading steamer *Goyo Maru* at anchor with a crew of about twenty men on board. The latter were ordered ashore. Lieutenant Maximoff boarded the *Goyo Maru*, took possession of her papers and flag, and then sent her to the bottom with a torpedo. The torpedo boats forthwith rejoined the squadron, after four hours' absence.

The Russian Squadron returned to Vladivostock, and late during the night of April 26th started on another expedition. At 6 o'clock on the evening of April 27th, when 300 miles out, the squadron sighted a Japanese steamer with war stores on board. Her crew, consisting of fifteen Koreans and twelve Japanese, were placed in safety, and the steamer was sunk by a pyroxylin cartridge fired from the *Gromoboi*.

The same night, at about 11 o'clock, when the squadron was twelve miles off Plaksin bay, Korea, a large Japanese transport, the *Kinshu Maru*, was overhauled. Her commander mistook the Russian for a Japanese Squadron, and signalled, "I am bringing you coal." The Russian commander promptly signalled in reply, "Stop instantly."

The crew of the transport then recognised their mistake, and began to lower boats and steam launches with the greatest haste, and endeavoured to escape, but the Russian steam cutters captured them all.

On board the transport were four Hotchkiss guns of 47 millimetres. At the outset it looked as if no one was left on board, but on examination it was found that the cabin was locked and barred. Therein the Russians found six infantry officers, who surrendered without resistance and were taken on board the *Rurik*. In another part of the ship 130 infantrymen, who refused to surrender, were found.

Admiral Yeszen, whose vessel was about 1600 yards away, ordered his men to leave the transport. The Japanese soldiers then opened fire and wounded a Russian. Afterwards the transport was sent to the bottom by means of a mechanical mine and a few shells.

The Japanese on board did not cease firing, and made no attempt to save themselves, although they had a launch in which they could have left the transport. The fire of the Japanese actually continued until the waves closed over the ship.

The transport had on board not only ammunition but 2000 tons of coal for Admiral Makamura (? Kamimura).

The prisoners numbered 183, including seventeen officers. Altogether 210 prisoners were taken by the Russian squadron, landed at Vladivostock, and immediately despatched by train to Nikolsk.

It was reported at the time the Russian cruisers were returning

to Vladivostock that a Japanese fleet of ten vessels was also making for that port, but it failed to reach Vladivostock, owing to the fog. A wireless telegraph message was picked up by the Russian ships while at sea. It was in code and unintelligible, but was evidently passed between the Japanese ships.

Among the Japanese prisoners are a Colonel and an officer of the general staff, while the soldiers include a number of Japanese who before the war worked as artisans at Vladivostock.

The following article contains full details of the disastrous incident:

Story of One of the Refugees.

Nine of the *Kinshu Maru* refugees, including Mr. C. Ichimaru, proprietor, and Mr. K. Hiramatsu, manager of the Ichimaru Company, Sasebo, an employee of the Sasebo Kyosan Company, and six labourers, arrived at Sasebo from Gensan on the 6th inst. One of the men gives full details of the disaster to the *Kinshu Maru*, as follows:

Before the Disaster.

The *Kinshu Maru* left Sasebo at 4 p.m. on the 12th ult., and subsequently reached Hai-ju bay, where, after three days stay, she was joined by a squadron which had participated in the seventh and eighth bombardment of Port Arthur. The *Kinshu Maru* then followed the squadron to Gensan, which was reached on the 23rd. All the vessels of the squadron, except a number of torpedo boats, proceeded north on the 24th, while the *Kinshu Maru*, escorted by the remaining torpedo craft, left Gensan for I-wön, Han-gyöng-do, at 6 a.m. on the 25th. There were on board the *Kinshu Maru*, besides the crew of 70, the Ninth Company of the 37th Regiment, a number of naval officers and men, 10 sutlers and 77 labourers. The military troops had embarked the preceding day. On arrival at their destination, the troops landed for reconnoitring purposes and returned about 5 p.m. The *Kinshu Maru* started on her return journey about 7 p.m., but the torpedo boats, which had convoyed her to I-wön, had left half an hour before. Shortly afterwards all was quiet on board the *Kinshu Maru*, the majority of the men having gone to bed.

Encounters the Russian Warships.

About 10 p.m. we were awakened by a Mr. Fujii, an employee of Mr. Yamada, a tailor in Tokyo, who informed us that we had been overtaken by Russian warships. At first we gave no heed to his remarks, but were surprised, on going to the upper deck, at finding the Russian armoured cruiser *Rossia* throwing her searchlights on our

vessel from a distance of 40 or 50 yards. Meanwhile Captain Yagi was heard conversing in English from the conning tower with a Russian officer, who was similarly posted in his vessel. We could not understand them, but heard the words *Kinshu Maru*. We at once went below in order to awaken the rest of the men, and when we reappeared on deck, Lieutenant-Commander Mizoguchi, superintending naval officer, ordered the boats to be lowered as, he said, an hour's grace had been given the vessel. Shortly afterwards, Lieut.-Commander Mizoguchi, Captain Yagi, Paymaster-Lieutenant Iida, Interpreter Kondo, a few bluejackets, and many others proceeded to the *Rossia* in boats. We, however, remained on the vessel, still hoping to escape. We went below, where I equipped myself with a life-buoy and put as many clothes on as possible in order to save myself, in the event of immersion, from freezing in the water. Some time past midnight, all was noiseless and when we again went up, no one was found there. Going to the stern, however, we found a sentinel standing in front of an officer's cabin, who said that the military troops on board were all determined to share the fate of the *Kinshu Maru*, and that they were very quietly remaining below deck. At 1.30 a.m. the enemy discharged a torpedo, and also used a quantity of explosive to blow up the ship. The torpedo pierced the hold. About 2 a.m. the enemy torpedoed the *Kinshu Maru* for the second time, with the result that she was cut in two at the engine-room and sank. All the troops were whirled into the water, while some of them endeavoured to shoot enemies at the last moment of their lives.

IV. *The Okinoshima Disaster.*

The Sinking of the Hitachi Maru and the bombardment of the Sado Maru.

(By the third raid of the Vladivostock Squadron.)

On June 15, 1904, the Vladivostock Squadron made its 3rd appearance, sank the *Hitachi Maru* and fired at the *Sado Maru,* near Okinoshima.

Besides, a number of other ships fell victims to that Russian attack—the Japanese sailing ships *Izumi Maru, Ansei Maru, Hachiman Maru, Seiyei Maru, Koun Maru, Seisho Maru,* as well as the British S. S. *Allanton* and *Cheltenham.* (The *Allanton* case is dealt with in another place.)

Reliable reports bearing on the *Hitachi Maru* and *Sado Maru* are inserted on next page.

Official Reports.[1]

The following are the more important of the reports received at the Imperial Headquarters regarding the Russian Squadron that appeared in the neighbourhood of Okinoshima:

I.

Okinoshima, June 17, 1 a.m.

At 6 a.m. on the 15th the three Russian ships, the *Rossia, Gromoboi* and *Rurik*, were seen sailing in the easterly roadstead from the north, but at 7.55 they separated at about 8 miles southwest of this place. One of them proceeded towards Okinoshima, the other two going in the direction of Wakamiya Island (Oki). At 8.20 the latter two were lost in the fog, but the former commenced firing at 8.22. The object of their firing was not known at the time, but at 10.30 a steamer was sighted sailing to the eastward about 13 miles in a southerly direction. It is therefore presumed that the Russians were firing at that steamer, which was seen to change its course southward at 10.45. At 12 both the war vessels and the steamer were lost in the fog, but the booming of guns did not cease. The steamer seems to have been pursued until 12.40 p.m. Fifty-three survivors from the unfortunate *Sado Maru* reached here last night, and others are continually arriving.

II.

From Admiral Tsunoda, Takeshiki Station, June 17, 7.53 a.m.

The 15th torpedo-boat flotilla returned here to-day at 12.30 a.m., having in tow several boats containing First Accountant S. Imazawa, Third Accountant Y. Nishihama and 77 others. Immediately after the news was received, at 1.20 p.m. yesterday, that reports of guns had been heard in an easterly direction, the flotilla was despatched towards Okinoshima, where it arrived at 4.30 p.m. and picked up the above survivors.

According to the statement of First Accountant Imazawa, of the *Sado Maru,* the latter left Bakan at dawn on the 15th inst., proceeding towards the south of Okinoshima and was about to overtake the *Hitachi Maru,* when one of the enemy's warships was sighted through the rain.

The *Hitachi Maru* turned back, as did the *Sado Maru,* but the two vessels were quickly fired upon by the enemy's warships, *Rossia* and *Gromoboi.* After the *Hitachi Maru* had received some 50 or 60 shots, a large volume of white smoke was seen rising from the vessel, presumably fire having broken out.

[1] *Japan Times*, May 18, 1904.

The *Sado Maru* received more than ten shots at close range, but she stopped as the enemy suspended firing. The naval superintendent of the transport went to the enemy's warship to negotiate, and after securing 40 minutes' grace ordered all persons to leave the vessel. Non-combatants were forwarded to the enemy's ships, relying upon his consent to take them on board, but the enemy refused to receive them, except the first officer (an Englishman). The enemy, moreover, before the expiration of the allotted time, discharged torpedoes from both sides, which struck the transport and exploded, whereupon all on board jumped into the sea, most of them being drowned. Only 80 persons, as mentioned above, took to the boats belonging to the transport, and drifting on the waves fortunately reached the island about 7 p.m., when the 15th flotilla took them on board and returned here. These survivors were transferred to the *Nanyetsu Maru* on the way and will be sent back at the first opportunity.

III.

The Headquarters of the 12th Division, Kokura, June 16.

Two military transports, the *Sado Maru* and *Hitachi Maru*, met the enemy's fleet, consisting of three warships, at a point about 40 miles off Moji, on the 15th inst. at 11 a.m. The enemy attacked the transports, with the result that the *Hitachi Maru* was sunk, while the *Sado Maru* was torpedoed at her engines. The enemy then steamed towards the north.

IV.

From Captain Yoshizawa, Moji, June 17.

The *Ise Maru* has just arrived with the survivors of the *Sado Maru* on board. The *Sado Maru* escaped sinking. Assistance is now being rendered by the *Hino Maru*.

V.

From Colonel Tamura, I.E., Moji, June 17.

At 6.30 a.m. on the 15th inst., the *Sado Maru* passed the Strait of Bakan, and was proceeding parallel with the *Hitachi Maru*, when at 6.50 a.m. she was fired on by three Russian warships and subsequently surrounded by them. We then stopped the ship and transferred the majority of the non-combatants to the boats. At about that time the steamer was shelled and torpedoed by one of the ships, apparently the *Rossia*, and great damage was sustained by the engines. Just then, the *Hitachi Maru* was heavily fired upon by two Russian ships and sunk, having been set on fire. Water rushed in through the damaged side of the *Sado Maru*, whereupon the officers and men on board gave three *Banzai*! for the Emperor, and were preparing for

the last moment either by sword or revolver, when one of the Russian ships torpedoed the steamer a second time. This torpedo struck the steamer at the engines. The Russian ship then hurriedly retreated to the north, on perceiving which all idea on the part of the men of taking their own lives was abandoned, and they worked hard constructing rafts and preventing the water from flooding in. The steamer was adrift, struggling against the bad weather, for more than thirty hours. At 1 p.m. on the 16th, she met a sailing boat, to which all on board were transferred. Afterwards while proceeding to Bakan, we were hailed by the two rescue boats, the *Ise Maru* and *Hino Maru*, which took all of us on board and rached Moji at noon to-day.

The superintending officer, Commander Ogura, who went to one of the Russian ships, was carried away. Accountants Imagawa and Nishihama, Surgeon Miyazawa, railway officials Kobayashi, Yano and Nakamura, Engineers Kojiro, Sakai and Murata, and some subordinate officials and others (including crew), about 600 in all, had quitted the steamer before, and their fate is unknown.

V. *The Sinking of the Seisho Maru and the Koun Maru.*

(By the third raid of the Vladivostock Squadron.)

On June 30, the Vladivostock Squadron once more swooped down upon Gensan and there sank Japanese ships. The following was sent in concerning the disaster:

June 30, 1904.

On June 30, at 6 a.m., six Russian torpedo boats entered Gensan, where they fired about 200 shots upon the settlement and sank one steam launch and one sailing vessel. Then rejoining three ships outside the harbour, they disappeared. In the incident, two Koreans and two soldiers were slightly wounded, and buildings were slightly damaged.

On July 2nd the following fact was known: Thirty-five buildings in the settlement were shot at, and the *Seisho Maru*, owned by Kishitaro Hamane at Hakodate, which was laden with rice, rope, matting, table salt, fishing boats, fishing tools, etc., was sunk.

The Russian report concerning the incident was as follows:

A Reuter's telegram, bearing the date of July 8th, 1904, says that Admiral Skrydloff on July 5th telegraphed the Czar to the effect that a torpedo flotilla and the transport *Lena* were sent to Gensan

to reconnoitre under the command of Capt. Baron Rahden. No men-of-war were met with, but a coasting steamer and a schooner were found and burned after the crews had landed. A large number of barges lying along the shore were also destroyed. In the Japanese settlement and on the hill, Japanese soldiers were seen hastily assembling, and they commenced firing on the Russian torpedo boats, which replied, compelling them to retire. The torpedo boats set fire to the barracks by firing grenades. No loss on our side.

British steamer *Cheltenham*, which was seized by our cruisers in the Sea of Japan, arrived July 5th in Vladivostock. She was bound from Otaru to Fusan with railway sleepers and construction timber for the railway between Söul and Fusan.

Later on, the following report, containing much fuller particulars, was sent:

July 21, 1904.

On June 30, at 5 a.m., four Russian torpedo boats suddenly came in. Soon after three more were added, and three large men-of-war and one transport were seen lying in the offing. The enemy's flotilla was already approaching the jetty, and bluejackets of one boat were about to land, when a warning was given to the settlers to take immediate refuge in a certain place. At this crisis, the alarm trumpet of our soldiers stationed here being heard, the enemy kept off the landing and retreated, signalling to the rest of flotilla. While retreating, they fired at our steam launch *Koun Maru*, and sank the *Seisho Maru*. Then they began to fire at our settlement, first at the people's houses along the eastern coast, then gradually towards the northwest, piercing through the roof of the building No. 6 annexed to our Consulate, sending shells in front of the Chinese Settlement from over the hill behind the Consulate. The firing lasted for about 45 minutes; shots numbered about 200 altogether.

Thirty-five houses sustained damage, some of which received six or seven shells each. Six private houses and the kitchen in the site of the old barracks were damaged beyond repair by numberless shells, which seem to have been purposely directed there.

VI. *The Sinking of the Jizai Maru, Fukuju Maru, Takashima Maru, Kaho Maru, and Hokusei Maru No. 2.*

(By the fourth raid of the Vladivostock Squadron.)

Regarding the Japanese sailing ships sunk by the Vladivostock Squadron in its fourth appearance, the following typical information will suffice:

The crew of the ill-fated sailing vessel *Jizai Maru*, which was recently sunk by the Vladivostock squadron off the southern coast of Japan, returned to Tokushima prefecture, their native place, on the 16th inst. from Vladivostock via Muroran. Referring to the sinking of their vessel, they state that whilst off Omai-zaki, Enshu, at about 2 p.m. on July 24 they sighted three Russian warships of the Vladivostock squadron, the foremost of which signalled to the vessel to stop. After firing a few blank shots, a boat manned by 27 bluejackets, including an officer, came alongside the *Jizai Maru* and boarded her. They at once searched the vessel and finally seized the ship's papers, over 192 *yen* in cash, watches and other articles belonging to the helpless crew. The latter, together with the raiders, then left the sailing vessel, which was destroyed by explosives which the Russians placed in the vessel before quitting her. On August 1st, the Russian warships arrived at Vladivostock via Tsugaru Straits, and after a detention of seven days the crew of the *Jizai Maru* were taken on board a German steamer, which conveyed them to Muroran, where they arrived on the 9th inst. Prior to their release the men were questioned by the Russian officers regarding the condition of Yokosuka naval station and other matters, but no definite reply was given the enemy.

The substance of the information furnished by Moshichi Okata, the master of the *Fukuju Maru*, is as follows:

At 9 a.m., on July 21, the *Fukuju Maru* left Port Fu-yao for Port Uraga, laden with 6619 packages of salt, and sailed eastward, together with the *Jizai Maru*, which was met at Naruto while the former was seeking shelter there from the squall. At about 3 p.m., on the 24th, while sailing at a distance of about four nautical leagues from the *Jizai Maru*, about 12 or 13 nautical leagues from Yokosuga, Shizuoka Prefecture, she sighted three large vessels, apparently warships, in the offing of Oshima, although their nationality could not be made out owing to the absence of flags. She soon perceived, however, that they were Russian warships when two of the three surrounded the *Jizai Maru* and fired at her. Then one warship came near the *Fukuju Maru*, and fired several shots at her from a distance of three or four *cho* (about 25 feet) and signalled to be prepared.

Then a boat was lowered from the warship, manned with about 20 bluejackets, including one officer, and was rowed towards us. On boarding our ship, the officer, whom I could not understand though he tried to convey his meaning by gestures, at last seized me by the

arm and forced me to go into the boat. Then followed the bluejackets' rummage among the crew's belongings, apparently without the officer's consent thereto. They brought out an octagonal clock, and 40 yen in cash which had been deposited in a drawer. I was roughly pushed back when I turned to the master's cabin to get important papers and my master's certificate. The muskets which they carried, however, were not resorted to. The sinking was carried out by means of two explosives left by them when quitting the vessel; one in the central part of the ship and the other under the foremast, which they fired at when the boat was about one *cho* distant from the ship.

We were taken on board the *Rurik*, where we found eleven of the crew of the *Hokusei Maru*, sunk off Muroran, detained in the hold. On the following day, we also met 24 Japanese sailors and 16 Chinese, who had been on board the German *Thea*, sunk off Nojima, Awa province; thus making up 58 altogether, four foreigners being detained in a different cabin. Our food consisted of Chinese rice boiled with oil, brown bread and watery soup and thrice a day Japanese tea was served besides the above.

We were allowed to promenade for half an hour to one hour every day within a plot on deck limited by a rope, and also to take a bath every day. In short, the treatment we received there was not so bad as we expected.

At 3 p.m., on the first inst., we arrived at Vladivostock—by what course I am quite ignorant, having been confined in a lower cabin—and were sent to the Bluejackets' Garrison, on the 3rd, at 10 a.m., where rude plank beds were given us to sleep on. At six in the evening an officer came, and in a gentle tone, to which we were quite unaccustomed, told us that we were to be sent back home on board a steamer, at 7.30, the following morning. In the morning at 7, we received sanitary examinations, medicines being dealt to the sick, and then were escorted by about 20 bluejackets as far as the pier, where we boarded a German steamer. At that time we first learned that the crew of the *Jizai Maru* had been detained on board the *Gromoboi*.

The German steamer, departing from Vladivostock at 10 a.m. on the same day, duly arrived at Muroran at 6.30 p.m. At 9 we came back to Uraga, our native place.

On our arrival at Vladivostock, we were menaced by a certain interpreter who made minute inquiries regarding our names, addresses and families, and at length being asked about our safety replied that though non-combatants, all the Japanese were to be despatched. He is said to have been pretending to be a Korean, although his features and language indicated his Japanese birth.

VII. *The Sinking of the Japanese Sailing Ship, Hachiman Maru No. 3 and Hoksei Maru No. 1.*

(By the fifth raid of the Vladivostock Squadron.)

On Monday, the 5th May, 1905, the Vladivostock Squadron made its last descent. At 2 p.m., the same day, we received the following report:

Mr. Sonoda, the Governor of Hokkaido, to Baron Komura.

5th May, 1905.

MINISTER FOR FOREIGN AFFAIRS:

4 Russian men-of-war surrounded and set fire to a Japanese sailing ship, 3 nautical miles off the coast. They steamed north.

The ship mentioned above was the *Hachiman Maru No. 3.*

The St. Petersburg Telegraph Agency published General Linewitch's telegram to the Czar, dated May 7th, to the effect that Captain Roden reconnoitred the Japanese coast with torpedo boats, and burned a schooner two miles off Cape Sutsuki, having previously landed the men on shore. A second schooner was taken 15 miles from the Japanese coast and brought as a prize to Vladivostock.

The other ship mentioned in the above telegram was the Japanese sailing ship *Daijin Maru.*

The detailed report of the Governor of Hokkaido concerning the sinking of the *Hachiman Maru No. 3* was as follows:

Regarding the Russian bombardment of our sailing ship, which I telegraphed to you the other day, I was furnished with particulars from the police master of the locality concerned, which are substantially as below:

The sailing ship *Hachiman Maru No. 3* (about 206 tons), belonging to one G. Arichika, Kono village, Nanjio county, Echizen Province, laden with 250 *koku* of salt and 300 *koku* of sugar, and with the master Hioshichi Omono, and 10 men on board, left Wajiri, Kitami Province, on the 29th prox., and while sailing three nautical miles off the coast of Shiribeshi Province, a little past noon, on the 5th inst., sighted 4 men-of-war moving towards her. Each of them hoisted the Russian flag and lowered a boat, manned with 8 or 9 bluejackets. Coming aboard, the Russians deprived the crew of their cash and

watches and ordered them to betake themselves to the ship's boat. Then they sprinkled petroleum on the ship, and soon after set fire to her by two shots.

The crew rowed for the coast, and were rescued by fishers who came out to meet them. The helpless ship sank at 5 p.m., the same day. According to what the crew said, the enemy's warships were gray-painted, two-funnelled, without masts. Three of them, most probably torpedo boats, were about 30 feet in length; one, apparently a destroyer, being about 100 feet.

Regarding the disaster, the foreign press were aware of the illegal act on the part of the Russians. For instance, the Berlin *Local Anzeiger* stated that the manner of Russian procedure was by no means free from criticism, since it was a grave mistake for the Russians to satisfy themselves with such trifling booty as a small Japanese sailing vessel, and moreover by destroying the prize, they raised anew a disputed question which had already caused much accusation against them in the course of last year.

VIII. *The Sinking of the Keisho Maru.*

(By the last raid of a torpedo destroyer belonging to the Vladivostock Fleet.)

On Aug. 3rd, 1905, at 4 a.m., the Korean S. S. *Keisho Maru* was sunk by a Russian destroyer, in a most unlawful manner, as will appear from the following quotation. How the said ship was sailing in a law-abiding way, and how Russians injured the crew without any lawful warning, being duly considered, there is no need of hesitation in criticising the Russian conduct as barbarous.

The following was the official report with the date of August 3, 1905, concerning the affair:

The S. S. *Keisho Maru* (169 tons), belonging to Hori Rikitaro at Söul, was shot at by two Russian destroyers, off Kiojo, on August 3, 1905, at 4.48 a.m. The master and a boy were killed, and of the crew one was seriously and another slightly wounded. The ship betook herself to Tokushin for refuge. Upon examination, it was found she had received one shot under the water level, starboard side, two

between the water level and deck, four between the deck and the bridge, and one on the funnel, the enemy having discharged almost 60 shells. In the incident, the master and the boy were killed, the chief cook was seriously wounded and died one hour after the incident, and of the crew a Korean was slightly wounded. The engine room being safe, no great trouble will be met with in navigation.

The owner's report was as follows:

Details of the Keisho Maru Disaster.

The S. S. *Keisho Go.* Korean by nationality, has been engaged for years in calling at non-trading ports along the coast of Kamikiantai. The recent disaster took place while sailing towards Seishin, having left Rinkoshin on Aug. 3, at 4.30 a.m., laden with 3021 packages containing military provisions, sanitary and building materials and other things. On Aug. 3rd, at 4.20 a.m., about five nautical leagues north of the Cape of Giotaishin, two destroyers appeared on the port side, having suddenly veered towards the starboard, and the steamer was forced to stop. Then a shower of shots killed the master and a second-class passenger by name Bunkichi Higuchi, and seriously wounded Sakugoro Katami, the chief cook. After about 20 minutes' cannonading, seeing the steamer was foundering, the enemy's destroyers took their course towards Vladivostock. We betook ourselves to Tokushin, where the three dead (for the seriously wounded died on the ship's arrival here) and the wounded were properly disposed of, and the whole freight landed. Although upon examination the ship was found to have received about 10 shots, none were so serious as to prevent her from further navigation. The steamer, therefore, leaving Tokushin yesterday, at 8.50 a.m., arrived at Joshin the same afternoon, at 6.40. Here we present you with full details of the late disaster, together with the list of the crew's names.

ASAKICHI TOKUNAGA,
TSUNETARO OSHIRO,
TOKICHI KUWABARA.

IX. *The Sinking of the Han-yei Maru.*

(By the Port Arthur Squadron.)

This was the solitary instance of a merchant ship sunk by the Port Arthur Squadron.

The first official report concerning the incident was as follows:

Official Report.

A Chefoo despatch, dated March 29, received by the Naval Office, says that the Japanese steamer *Han-yei Maru* running between Chefoo and other Chinese ports, was captured by Russian warships on March 26, near Tai-chin island, Miao Archipelago. Ten Japanese and seven Chinese on board were taken prisoners. Her captain and two sailors, however, escaped in a junk, and arrived at Chefoo on the 26th, by way of Ning-hai-chow.

The steamboat was fired at and sunk by the Russian warships, which then returned to Port Arthur.

Below is the Russian report concerning the same:

A Russian Version.

In connection with the above incident, an official report of Major-General Flug at Mukden, dated the 27th inst. and received at Shanghai, states that on the previous day the Russian Squadron captured a Japanese steamer and a junk, in the vicinity of Kang-tao Island, one Whitehead torpedo being found in the former vessel. The crew of the steamer, adds the report, were taken prisoners, and the vessel was fired at and sunk by the Russians.

According to the *Novy Cry* of the 29th of March, the Russian Squadron at the time the *Han-yei Maru* was sunk consisted of the *Askold*, *Novik*, and one more warship, followed by a flotilla of torpedo boats. Those concerned in the sinking were the *Novik*, and a destroyer. The original intention of the *Novik* to tow the *Hanyei Maru* as far as Port Arthur was, according to the same authority, found impossible, owing to the breaking off of the capstan and bollard-head, and the speed of the ship having been insufficient to let her sail to that destination by herself, the sinking was the only alternative. The Chinese disguise which the Japanese were assuming caused the Russians to have the suspicion that the ship was commissioned to provide the Miaotao Archipelago with a signal station for military purposes, and the existence of a Whitehead on board seems to have afforded them justification for treating her as having a hostile aim.

On May 3rd, 1904, it was reported the following telegram

from the U. S. Ambassador to Russia was received by the State Department:

"In the case of the *Han-yei Maru*, Viceroy replies that this boat was seized at Miaodam on account of proof of hostile intention towards Russian authorities. The subjects on board the said vessel, some of whom were dressed as Chinese, were taken to Port Arthur, and placed in the hands of the judicial authorities for examination."

The following statement by a Chinese passenger on board the *Han-yei Maru* deserves to be cited:

Statement of a Passenger.

The sinking of the Japanese steamer *Han-yei Maru* by Russian warships took place near the Miao-tao Islands on the 26th ult. The Chinese portion of the crew, who recently returned by junk from Port Arthur, have furnished the *Tokyo Asahi's* correspondent at Chefoo with the following description. The name of the narrator is Chan Tai-yung.

The *Han-yei Maru* arrived at To-ki-tao Island on the 25th ult., and three Japanese and two Chinese, including Chan, landed there. A Japanese, who had been left there on the previous voyage, told the party that the Chinese on the island had picked up a Japanese torpedo, 15 feet in length. He proposed to buy it, but on being asked 2000 *yen* he abandoned his intention.

The party then told the Chinese that it was a Japanese torpedo and was of no use to them, and as no one was likely to purchase it, they had better return it to the Japanese Consul at Chefoo, who would doubtless reward them.

The villagers subsequently parted with the torpedo for 40 *yen*, and the dangerous missile was taken on board the *Han-yei Maru* in the evening.

The Last of the Han-yei Maru.

The next morning the steamer, with a junk in tow, left Ta-kin-tao for North Hwang-chêng-tao Island. Seven Chinese were on board the junk, which was laden with vegetables and provisions. At 10 a.m. the steamer approached Ta-kin-tao, when smoke was observed in the direction of Hwang-chêng-tao, and shortly afterwards a large warship appeared on the horizon. In addition, three vessels, which had been in sight for some time, but which owing to the absence of smoke were thought to be Chinese fishing vessels, turned out to be destroyers. The captain had watched the three vessels through his glasses and declared them to be British ships. The crew of the *Han-yei Maru* were

not able to determine the nationality of the destroyers until the latter were close at hand. When the Russian flag was seen flying from one of the destroyers, the captain ordered the Japanese flag to be hoisted, which was immediately done. Prior to this, the Russians seem to have signalled to the vessel to stop, but on the Japanese flag being displayed, the Russians at once opened fire. The junk was hauled close to the steamer and Chan and four other Chinese, as well as four Japanese, jumped into it, the number of passengers on the junk being 13, exclusive of three sailors. Meanwhile Chan disguised himself as a fisherman and severed the tow-rope. A Russian officer, rowed by four or five sailors, put off to the junk and arrived on board the latter. Chan saw two Japanese, clothed in foreign costume, approach the Russian officer. The Chinese on board showed their queues and the Japanese also uncovered their heads. The Russian boat carried to the warship the officer and the Japanese. The junk endeavoured to escape, but was prevented by a Russian destroyer, which came alongside and took off all the Chinese passengers.

When some three furlongs from the *Han-yei Maru*, the destroyer opened fire on the latter, and this example was followed by the other destroyers, some 20 shots being discharged in all. The time was 11 o'clock, and the place three miles to the east of Ta-kin-tao. The warships and destroyers then proceeded to Port Arthur, which was reached in two and a half hours.

The Examination of the Chinese.

Hoang-king-wu, one of the Chinese captured by the Russians, had been employed by the *Tokyo Asahi's* Chefoo correspondent to collect news, using the junk for this purpose. He coached the Chinese in what they should say in the event of being stopped by the Russians. On the evening of the 26th ult. they were examined by M. Jijinkoff, an agent of Vice-Admiral Makaroff, to whom they declared they were provision dealers and had come from Chefoo to sell their goods. They did not know whether the sunken ship was Japanese or Russian and had paid the steamer to tow the junk. Not only did they deny all knowledge of a torpedo being on board, but stated they did not know what a torpedo was. They were not aware that the Japanese had paid 40 *yen* for a torpedo at Ta-kin-tao, for they did not land at that island, where their vegetables were not likely to sell. The Russians were satisfied with the answers and released the men, who were told to hire a junk and leave the place.

The present disaster contains various questions of fact, as, for instance, whether the torpedo on board the *Han-yei Maru*

was really intended as a hostile missile or not, and if the sinking did not take place in neutral waters, and so on.

Regarding the first question, we were furnished with the following information, dated April 20th, 1904, the contents of which substantially coincides with the statement above cited:

The Russian Allegation Found to be Baseless.

The *Tokyo Asahi's* Chefoo correspondent wires that on the question of the presence of a torpedo on board the *Tokyo Asahi's* despatch boat *Han-yei Maru*, which was sunk by the Russians, being referred to the Taotai of Chefoo by Mr. Mizuno, Japanese Consul, the Taotai referred the matter to the Governor of Teng-chow-fu, who, in reply, stated that the torpedo had been picked up at sea by a Chinese and brought to To-ki-tao. On the arrival there of the *Han-yei Maru*, the torpedo was purchased by some one on board for 40 *yen*, the intention being to keep the missile as a curiosity.

The report was submitted to Mr. Mizuno on the 17th inst. As the Russians have claimed the right of sinking the *Han-yei Maru*, on the ground that she was armed, this claim will no longer be tenable.

The following report was received from Chefoo on April 1, 1904:

"The fishers of the Miao-tao Islands applied to all the consulates in Chefoo for the sale of a fish torpedo. The same torpedo was found on board the *Han-yei Maru*, having been apparently sold by the villagers to some passengers of the ship while she was calling at those Islands. The master and two others who came hither being entirely ignorant of the fact, is awaiting the further information from the quarters concerned."

Again, the following report was sent in April 20, 1904:

Concerning the Fish Torpedo on Board the Han-yei Maru.

In order to obtain some documentary evidence which may prove that the fish torpedo in question was an obsolete one picked up by inhabitants of To-chi-tao, and had nothing to do with any hostile purpose, the Government office at this port was requested to make an inquiry on the islands concerning the same. The answer received is as follows:

Facts affirm that the torpedo in question was picked up by a Chinese fishing boat and sold to the Japanese for the sum of 40 *yen*.

Thus the nature of the questionable torpedo was ascertained.

About this affair it must be noticed that the firing on the Japanese steamer by Russian warships took place within China's territorial waters, after close examination of the Captain, that the firing took place within three miles east of Ta-chin-tao. According to the captain, the steamer left Ta-chin-tao the morning of March 26th for the south of Huang-cheng-tao, steaming north-northeast. The chart shows that a direct line connecting the islands passes one and a half miles east of Ta-chin-tao; the steamer sank within three miles off the islands. There is no doubt about the Russian violation of China's neutrality by opening fire upon a Japanese ship within the territorial waters.

Regarding the same, the Japanese Government warned the Chinese Government.

As the result of the warning, the Minister of the Navy and the Governor of Shantung were instructed to make inquiry about the case. According to the report by the Tao-tai of Chefoo, the *Han-yei Maru* was fired at, and sunk off Ta-chi-tao, which was, according to another report by the commander of the *Hai-tien*, in Latitude 38° 17′ N., Longitude 20° 52′ E., within 2 miles of Ta-chi-tao, 4 miles south of Huang-chen Island. Upon receiving this report, the Chinese Foreign Department demanded an explanation on the above grounds from the Russian Minister.

The ten Japanese found on board the *Han-yei Maru* were taken, under guard, on board the *Novik* and *Ermark*. On the 6 of April, 1904, instructions were telegraphed to Mr. Takahira, the Minister to the United States of America, requesting the assistance of the American Government in securing the release of the crew above mentioned in the following sense:

The *Han-yei Maru* (60 tons), chartered by Chefoo correspondents of the Osaka *Asahi Shimbun*, which steamed to the Miao-tao Islands to hire a Chinese junk, was sunk by several Russian men-of-war, on March 26, near Ta-ching-tao. Ten Japanese and seven Chinese found on board were taken to Port Arthur, of whom the Chinese were released, but our men are said to be still detained there.

For the present, the unlawful bombardment which took place within three nautical miles of Ta-ching-tao, is to be dealt with separately —to request the efforts of the American Government for the speedy release of the detained, one of whom is the agent of the said correspondents, four are crew, and five passengers, is necessary. For further information it should be stated, that the *Han-yei Maru* had on board a fish torpedo. Undoubtedly it wil be the cause of the unfavourable misunderstanding. It was, however, one that had been picked up by island fishers, just after the sea combat at Pigeon Bay, and sold to a passenger on board the *Han-yei Maru*.[1]

Minister Takahira accordingly set about the negotiations, the proceedings of which are fully contained in the following correspondence:

Legation of Japan, Washington, April 9th, 1904.

SIR:

I have the honour to inform you that I am in receipt of a telegram from His Imperial Majesty's Minister for Foreign Affairs, instructing me to bring to your notice the following facts, and to request the exercise of the good offices of the Government of the United States with reference thereto.

It appears that a Japanese steamer, the *Han-yei Maru*, of sixty-four tons displacement, which was chartered by a correspondent of the *Asahi Shimbun*, a newspaper published at Osaka, was fired upon and sunk by Russian men-of-war on the 26th ultimo, while within a distance of less than one marine league from Dai-ki-ga, one of the Miao-tao Islands, a group belonging to China. There were ten Japanese on board the steamer, the correspondent of the *Asahi*, four members of the crew and five passengers, besides seven Chinese. All of these persons were taken to Port Arthur; but subsequently the Chinese were released, while the Japanese, it is reported, are confined on board the Russian men-of-war *Novik* and *Yermak*. It is reported further that a fish-head torpedo was found on the *Han-yei Maru*, a circumstance which might be construed disadvantageously to the persons on board the steamer. The fact is, however, that the torpedo was purchased by one of the passengers from a Chinese fisherman of the Islands, who had picked it up from the sea after the naval engagement at Pigeon Bay.

From the information in their possession, the Imperial Government is convinced that the correspondent of the *Asahi* was acting solely in the performance of his professional duties, having been induced to charter the *Han-yei Maru* and to go to the locality where he was

[1] *Foreign Relations*, 1904, pp. 433–434.

captured, by the extraordinary success of the correspondents of several foreign newspapers who had employed small steamers for the purpose of observing the naval engagements in the vicinity of Port Arthur. He believed, moreover, that he was perfectly safe at the time, as he was within the territorial waters of China.

The Imperial Government, having released all passengers on board the Russian merchant vessels captured by them, and even the officers and members of the crews, excepting those whose presence was deemed necessary in the trials before the Admiralty Court, feel that they are justified in entertaining the hope that the Russian Government will adopt similar measures with reference to Japanese non-combatants in their country.

While reserving their views as to the lawfulness of the action of the Russian vessels in sinking a Japanese vessel in neutral waters and making prisoners of those on board, the Imperial Government instructs me to express the hope that you will find it possible to exercise your good offices for the purpose of obtaining from the Russian Government the release of these Japanese prisoners, all of whom are non-combatants and none of whom were engaged in the commission of acts hostile to Russia.

Accept, Mr. Secretary, the renewed assurance of my highest consideration.

(Signed) K. TAKAHIRA.

Honourable John Hay,
Secretary of State.

The answer is as follows:

Mr. Hay to Mr. Takahira.

Department of State, Washington, April 12, 1904.

SIR:

Upon receipt of your note of the 9th instant, the Department at once instructed Mr. McCormick at St. Petersburg to use his good offices in behalf of the members of the crew and the five passengers of the press boat *Han-yei Maru*.

I am to-day in receipt of a telegram from Mr. McCormick stating that the Russian Minister for Foreign Affairs has submitted this case to Admiral Alexieff by wire, from whom he has also again asked for a reply to the request for permission for a neutral ship to visit Khorsakov to take off the Japanese Consular Staff and subjects.

Accept, Mr. Minister, the renewed assurances of my highest consideration.

(Signed) JOHN HAY.

Mr. Kogoro Takahira, etc.

Mr. Takahira to Mr. Hay.

Legation of Japan, Washington, April 28th, 1904.

SIR:

In your note of the 12th instant you were so good as to inform me that you had instructed the United States Ambassador at St. Petersburg to use his good offices in behalf of the members of the crew and the five passengers of the press boat *Han-yei Maru*, and that the Ambassador had replied to you that the Russian Minister of Foreign Affairs had submitted the case to Admiral Alexieff by wire. I reported to my Government the steps thus kindly taken by you, in response to the request I had the honour to make on the 9th instant, and I am now in receipt of a telegram from His Excellency the Minister for Foreign Affairs instructing me to thank you for your kind compliance with that request and to ask that you will add to the obligation under which you have placed the Imperial Government in the matter by further instructing the United States Ambassador at St. Petersburg to ascertain what response has been made to the message to Admiral Alexieff above referred to.

Accept, Mr. Secretary, renewed assurances of my highest consideration.

(Signed) K. TAKAHIRA.

Again on the 2nd of May the following answer was given:[1]

Mr. Hay to Mr. Takahira.

Department of State, Washington, May 2, 1904.

SIR:

I have the honour to enclose herewith a copy of a telegram, dated the 1st instant, from the United States Ambassador at St. Petersburg, in regard to the case of the *Han-yei Maru*.

Accept, Mr. Minister, renewed assurances of my highest consideration.

(Signed) JOHN HAY.

(Enclosure.)

St. Petersburg, May 1, 1904.

SECRETARY OF STATE, Washington:

In the case of the *Han-yei Maru*, the Viceroy replies that this boat was seized at Miaodam on account of evident proof of hostile intentions towards the Russian authorities. The subjects on board the said vessel, some of whom were dressed as Chinese, were taken to Port Arthur and placed in the hands of the judicial authorities for examination. I am awaiting further particulars (which will be transmitted

[1] *Foreign Relations*, 1904, p. 719.

as soon as received) as to steamers equipped as hospital ships. The Viceroy accepts the proposal for exchange of information concerning prisoners of war, transmitting it as often as practicable, although not undertaking to do so at intervals of ten days, on account of local conditions making this difficult. I shall not fail to press the inquiry from time to time in order that information may be furnished as promptly as possible after it has been received at headquarters.

McCORMICK.

May 2, 1904. 10.15.

Sect. II. The Sinking of the Neutral Ships.

(By the fourth raid of the Vladivostock Squadron.)

I. *The Sinking of the Knight Commander.*

On July 20, 1904, the Vladivostock Squadron in their fourth cruise, sank five Japanese merchantmen, the *Takashima Maru, Kaho Maru, Hokusei Maru No. 2, Jizai Maru,* and *Fukuzin Maru,* visited the British merchantmen *Samara* and *Tsinan,* seized the German merchantman *Arabia,* and sank the British merchantman *Knight Commander* and German merchantman *Thea.*

Reuter's telegram, dated St. Petersburg, August 2nd, said that the Czar had received a report from Vice-Admiral Skrydloff, the substance of which is as follows:

Rear-Admiral Jessen, with the *Rossia, Gromoboi* and *Roorick,* left Sangan Strait July 20th. They sank the *Okassima Maru* and two other Japanese schooners. The British Vessel *Samara,* which had come out at Muroran was stopped. Although it was suspected that she was engaged in contraband traffic, the fact that she was carrying no cargo and was not caught in the act, compelled them to set her free. The coasting vessel *Gildo-union Maru* was met with, but was also released. The Russian Squadron stopped, on July 22nd, 100 miles from Yokohama, the German steamer *Arabia* which had a considerable amount of contraband goods on board, consisting of railway materials and flour, consigned to Japanese ports. She was sent to Vladivostock. The *Knight Commander* was met on July 23rd. She was stopped only after a fourth shot had been fired. According to unofficial and incomplete documents in the possession of the captain, and according to his declaration, it was shown that she was carrying to Japan a cargo of from 3500 to 4000 tons, composed mostly of railway materials. Having established the fact that she was undoubtedly carrying on

contraband traffic, and being unable to bring her to the nearest Russian port, owing to the insufficiency of her coal, without manifest danger to the squadron, the Russians sank her, after taking off her crew and papers. On the same day, two more Japanese schooners, with full cargoes of salt, were destroyed. The steamer *Schinan* was also stopped, but having no contraband, was released. The German steamer *Thea* was stopped on July 24th, and being regarded as a legal prize, was sunk. The squadron proceeded at about noon on August 30th towards Tsugaru Strait. At about 3 p.m., a cruiser, apparently the *Takao*, with three torpedo boats, a sailing vessel of the *Kongo* type, with four torpedo boats and a coast-defence battle-ship of the *Saiyen* type were sighted. These ships kept far astern of the Russian vessels, and at 5 p.m. they turned back. The squadron suffered no damage or loss of men, and there was no loss of life on the vessels sunk or taken.

First the *Knight Commander* disaster shall be dealt with. The Russian report of the same incident is as follows:

According to Reuter's telegram, the Russian official account of the sinking of the *Knight Commander* contains the following:

The ship only heaved to at the second shell, having hoisted British colours. A visit made to the vessel showed that the captain had no charter and no manifest, and that certified copies of these documents presented by the captain, showed the cargo to be destined for Kobe and Yokohama. It was established that the ship was chartered from America to Japan with a cargo of railway materials and machinery, which were contraband of war. The ship was therefore deemed liable to confiscation. The proximity of the enemy's port, lack of coal to enable her to be taken to a Russian port, and the impossibility of supplying her with coal from the Russian cruisers, owing to the high sea running, obliged the commander of the cruisers to sink the *Knight Commander*.

Both the *Times* and the *Standard*, commenting on the news that the Vladivostock Prize Court had given its decision declaring the *Knight Commander* to have been a lawful prize, said that this was like hanging a man first and then finding him guilty.

The following evidence regarding the sinking of the British steamer *Knight Commander* was given at the inquiry held at the British Consulate, Yokohama, on Wednesday morning:

William Beaten Brown, master of the British steamer *Tsinan* deposed: "On the afternoon of July 24th, 1904, we were signalled to stop in Latitude 34° 10′ N., Long. 133° E., by the Russian cruiser *Rossia*. They sent an armed boat's crew on board, and the officer requested to see the papers, which I had ready for his inspection. He signalled the contents of the manifest to the flagship, asked for instructions, and said they were not going to send a prize crew on board. The officer was very particular about the consignees of the cargo and said that they had to be very careful with our flag. The next message he received by signal was that the Admiral desired to send on board the crew of the British steamer *Knight Commander*, and that as they were British subjects I was compelled to take them. It was at first decided to give us the whole Lascar crew, but subsequently a second message came that they would only send 21. I then asked what had become of the *Knight Commander*, and he replied: 'We sank her this morning.' On my asking why she had been sunk, he said that she carried contraband of war, flour and railway materials. He said they had captured a German ship, a good capture, which I understood to be within the past day or two. He said they were very tired of running after small merchantmen and they had lost count of how many small Japanese tramps they had sunk. The 21 Lascars were sent on board and the officer made an entry in my official log book. Before leaving he ordered me to blow off steam. I was not to move from my present position until the fleet was beyond the horizon, out of sight. We got under way at six. While the *Rossia* was steaming to intercept us I saw the *Gromoboi* stop alongside a small steamer which was just hull down. My attention was then taken up by the arrival of the *Rossia* and when I looked again the *Gromoboi* was proceeding towards us and the steamer had disappeared. The serang who came aboard told me they sank her, and the second officer, I believe, heard the sound of firing."

Frank Jolliffe, second officer, British steamer *Tsinan*, said: "On the voyage direct from Hongkong to Yokohama, when about 32 miles S.W. of Omaizaki, at about 3.05 p.m. on the 24th of July, 1904, we sighted a squadron of Russian ships of war. I was on the bridge at the time. At 3.34 p.m. we stopped on a signal being given, and the *Rossia* sent a boat alongside. The Russian officer, who spoke excellent English, came on board, and requested the production of the ship's papers, manifest, etc. Before leaving, he made an entry in Russian in the log book. The cargo was a general one, consisting of wool, rice, sugar, tallow, etc., also 26 packages of machinery, and was not examined. The Russians boarded us about 3.46 p.m. and left about 4.45 p.m. The Russian officer stated that they had sunk the *Knight Commander* at

7.30 that morning, and the crew were given half an hour to leave and that there was no loss of life. It was apparently the intention of the Russians to put the whole of the crew, numbering some 60 persons, on board the *Tsinan*, but after one boatload, consisting of 21 Lascars, had been sent from the *Rossia*, the signal to draw off was given from the Admiral's vessel. The No. 1 Lascar, a quartermaster who speaks a little English, said that the Russians gave them nothing to eat and drink but bread and water. The officer stated that the number of small Japanese coasters they had sunk was beyond counting, and that the timber with which the sea was littered—we sighted quite 400 pieces between the hours of 10 and 2—was the deck cargo of these vessels. He added that a British steamship, the *Cheltenham*, and a German vessel, had been sent to Vladivostock with prize crews on board. The Japanese vessel, which was alongside one of the cruisers when we were being examined, had disappeared when we left. We were ordered to wait until the Russians were out of sight, but I subsequently, that is, about seven o'clock, observed them going slowly in the direction of Rock Island Light. I am of the opinion that they had not much coal, although the officer asserted that they had plenty."

The following particulars were gathered from the statement made by an Indian, one of the crew of the British S. S. *Knight Commander*, sunk on the 24th inst. by Russian warships in the offing of Idzu:

At 4 a.m. on the 14th, the *Knight Commander* met the Russian warships, which, however, were at first undistinguishable because of a fog. At 5 a.m., we were ordered to stop; which order was enforced by two blank shots, as the steamer still continued moving. Another shot was fired, and she stopped.

After we had stopped, a boat was lowered from the man-of-war, manned by a number of bluejackets, two officers included, and rowed to us. The officers inspected the ship's papers, unpacked a few packages of the cargo, and leaving two signallers behind, quitted the steamer, taking the master with them.

Shortly afterwards the master came back, and ordered the crew to quit the steamer at ten minutes' notice.

Great confusion took place, owing to the unexpected shortness of the period granted. The crew were placed on board two Russian men-of-war.

Then the smallest of these warships slowly approached the *Knight Commander*, and fired at her engine, and with another shot sunk her within five minutes.

We were then driven into a cabin below decks, where seven Japanese were found, separately confined. They were apparently in good health, but not well fed; to which privation we also were subjected, for nothing was given us to eat till past 2 p.m., when tea, and one biscuit each were sent in.

Between 3 and 4 p.m. the same day, we saw two Japanese sailing vessels sunk by the Russian warships. After 4 p.m., we were transferred to the British S. S. *Tsinan*, where we had a hearty meal.

The *Knight Commander*, after her departure from New York, called at Algeria, Port Said, Singapore, Manila and Shanghai. The cargo on board seems to have consisted chiefly of a railway plant and machinery. The total number of the crew was 65, eleven of whom were commissioned.

The following information also may be added:

Eye-Witnesses of the Sinking of the Knight Commander.

The villagers of Nagatsuro, Minamisaki-mura, Kamogori, Izu province, claim that they witnessed the sinking of a steamer, which subsequently proved to be the British vessel *Knight Commander*, by Russian warships on the 24th inst. About 8 a.m. on that day, the Irōzaki Watch Tower reported that three Russian war-vessels were in view at an offing seven or eight miles from Irōzaki and that they were surrounding a two-masted steamer, which was coming from the west. The people of Nagatsuro ran up a neighbouring hill to get a view of the Russian raiders and their victim, and on arriving at the top saw before them a merchantman, of about 4000 tons displacement, surrounded by three large war-vessels, one on her starboard side and the remaining two on her port side. Three shots were fired at the unfortunate vessel, which sank shortly afterwards.

The Release of the Crew of the Knight Commander.

At 1 a.m., Aug. 10th, 1904, the following telegram came in:

The Governor of Hokkaido to the Minister for Foreign Affairs.

The German S. S. *Germanicus* came into Muroran at 9 p.m. to-day from Vladivostock, bearing on board more than 60 persons, including the crews of the British S. S. *Knight Commander*, the German S. S. *Thea*, the sailing ships *Kiho Maru*, *Hokusei Maru*, *Zizai Maru*, *Fukujin Maru*, all sunk by Russian men-of-war.

On August 11th, the British Vice-Consul Forster at Hako-

date visited Muroran to make arrangements for the welfare of the released crew of the British steamer. The British Minister to Japan fully appreciated the sincere assistance rendered to him by our local government on the occasion of the visit.

The sinking of the *Knight Commander* awakened general indignation among the English public. The following report contains the substance of what the Marquis of Lansdowne gave in the House of Lords, and Mr. Balfour in the House of Commons, in answer to a question bearing on the incident:

London, July 28.—In the course of a statement in the House of Lords on the *Knight Commander* incident, Lord Lansdowne, the Foreign Minister, said:

"The examination of the cargo of the *Knight Commander* appears to have been very perfunctory," and he added: "Under these circumstances the Government could come to no other conclusion than that a very serious breach of International Law had been committed by the captors of the *Knight Commander*. Under no hypothesis can the Government conceive that a neutral ship could be sunk on the mere fiat of a cruiser's commanding officer, who assumed that the cargo of the vessel included articles which were contraband of war.

"Therefore, I do not suppose that the Russian Government will hesitate to disavow the conduct of the persons by whom this outrage —for it was an outrage, if the facts are as stated—was committed."

Lord Lansdowne, in conclusion, said: "We considered it to be our duty to lodge a strong protest against the conduct of these Russian ships. We accompanied the protest with a request that orders be issued to prevent a recurrence of similar incidents, and we demanded the release of the *Knight Commander's* British crew, who were taken to Vladivostock. The manner in which the Russian Government has dealt with the representations we had already felt it our duty to make, in regard to other cases, justifies the hope that the representations we now make will not be in vain."

In the Commons to-day, Premier Balfour, confirming the announcement made in these despatches, said the acute stage of the Red Sea incidents had passed and that the Russian volunteer fleet vessels would be withdrawn. He laid down the British view that no belligerent warship could issue from the Black Sea, and that the volunteer fleet vessels, in issuing therefrom, if they took belligerent action, had no right to issue or to take such action.

The strongest possible exception had been taken to the seizure of

the *Malacca* on the above ground, the Premier added. The Russian Government had met the British contention in regard to this particular incident.

As to the *Knight Commander* case, the Government had earnestly and persistently protested that the sinking of that vessel was contrary to the accepted practice of nations.

Mr. Balfour assumed a serious tone as he referred to the *Knight Commander*. "There are, I am sorry to say," said the Premier, "other questions, not connected with these incidents at all, which must cause some discussion between the two governments, and, like all discussions between governments, there may be legitimate cause for anxiety. We hold that it is not proper, on the authority of the captain of a cruiser, to take goods alleged to be contraband of war from a merchant ship, without trial."

This statement of the Premier was greeted with an outburst of cheers.

"The proper course," continued Mr. Balfour, "according to international practice, is that any ship reasonably suspected of carrying contraband of war should be taken by the belligerent to one of its own ports and its trial should take place before the Prize Court by which the case is to be determined."

The Premier continued: "More serious than the others is the case of the *Knight Commander*. If, as our information leads us to fear, she was sunk by a cruiser of the Vladivostock Squadron, on the ground that she carried contraband of war, in our view it is entirely contrary to the practice of nations in war time, and we have earnestly pressed our views on the Russian Government. We are under a strong impression that when the case is brought, as it has been brought by us, before the Russian Government, they will give such orders as to prevent a recurrence of that character. I feel confident that this will be the case."

In conclusion Mr. Balfour said: "I cannot help feeling that there is some misapprehension regarding the duty incumbent on neutrals. I have so far only stated what we believe to be the duties and obligations of belligerents, and these duties, to the best of our ability, we mean to see carried into effect; but the belligerent of to-day is the neutral of to-morrow. There are duties incumbent on neutrals which must be borne in mind by the ship-owners of the country. It is undoubtedly the duty of a captain of a neutral ship to stop when summoned to stop by a cruiser of a belligerent, and to allow, without protest, his papers to be examined. That obligation on neutrals we have systematically, consistently and sternly enforced when we have been belligerents, and it would not become us to minimise that duty."

In reply to a question regarding the seizures in the Red Sea, Mr. Balfour said that if any damage had been done, the claims for compensation would not be affected by the Anglo-Russian arrangement.

Serious discussions by authoritative scholars bearing on the incident make almost a volume, which, however, have been entirely omitted in the present work. The author's personal opinion on the incident will be given later on, where the legal questions on cases concerning the sinking of vessels are to be dealt with.

II. *The Sinking of the German S. S. Thea.*

As above mentioned, the Vladivostock Squadron sank the German S. S. *Thea* in their fourth attack.

Regarding the sinking of the *Thea* the following narration by the crew contains the fullest particulars:[1]

The *Thea* (1613 tons gross), having been chartered by the Hokkaido Sangyo Kaisha (an industrial concern), left Otaru for Shimonoseki on July 22. While sailing off Shimagazaki, Boshu, on the 25th at 2 a.m., she sighted numerous lights in the offing and heard (the sound of) the discharge of a gun. She could not make out the nationality of the vessel, which signalled to her, but presuming the signal to be an order to stop she cast anchor. Shortly afterwards a boat manned by two Russian officers and 20 bluejackets arrived, and the officers, after talking with the captain, received the ship's papers. The crew of the steamer were ordered to proceed on board the warship and the Russians then left. Several hours were spent by the crew in making preparations to leave the steamer. At 7.30 a.m. the Russian officers and bluejackets again returned to the vessel and ordered the crew to leave the ship at once. The boats were lowered in haste, but no sooner had they put off from the steamer, than an explosion occurred in the engine room. As this, however, did not sink the vessel, the Russians applied another explosive, and the next moment a violent explosion occurred, a huge column of steam rising from the engine room. Still the vessel remained floating, and the Russians, becoming impatient, fired some 60 shots into her, which sent her to the bottom. The crew of the *Thea* were then taken on board one of the Russian warships. The Japanese were separated from the for-

[1] This is what the *Jiji's* Hakodate correspondent learned from the crew of the ill-fated German steamer *Thea*, who had been brought back from Vladivostock by the German steamer *Germanicus*.

eigners, and as the former were imprisoned thereafter, nothing is known by them of the subsequent movements of the Russians. The ship duly arrived at Vladivostock, and the Japanese were landed on the 2nd. They were confined in the upper portion of a prison-like house for four days. On the 6th, the prisoners were informed that they would be sent back to Japan by a German steamer on the following day. The promise was carried out, but as they were kept below deck for four hours after their departure from Vladivostock, they know nothing about that port. At the time of their departure from the *Thea* they took their money and papers with them, but these were afterwards discovered by the Russians, who searched the men, and were thrown into the sea. The Russian vessel that sank the *Thea* was the *Rurik*. The *Thea* had a crew of 24 on board. Other ships sunk by the Russians, were the sailing vessel *Jizai Maru* (crew, 10; place, Onmae-zaki; date, 24th at 2 p.m.), the sailing vessel *Kihinyo Maru* (crew, 10; place, 45 miles east of Esashi), the sailing vessel *Fukunari Maru* (crew, 7; place, 14 miles off Onmae-zaki; date, 24th at 2 p.m.), the sailing vessel *Hokusei Maru* (crew, 10; place, off Esashi; date, 20th), and a few other vessels.

The following decision was given by the Russian Prize Court at Vladivostock:

Vossische Zeitung, 15 August, 1904.

Die Entscheidung in der *Thea*—Angelegenheit. Kiel, 14 August. (Eig. Ber.) Der Rederei des Dampfers *Thea*, den Herren Diederischen, Jebsen u, Co. ist nunmehr durch Vermittelung des Answärtigen Amts die Entscheidung des Prisengerichts Wladiwostok vom 27, juli alten Stils mitgeteilt; das Aktenstück lantet in Uebersetzung aus der französischen Uebersetzung:

Noch Prufung der Angelegenheit des dentschen Dampfers *Thea*, der am 12. Juli in der Nähe des Eingangs des Golfs von Tokio durch eine Abteilung russischer Kreuzer angehalten und versenkt ist, erkennt das Gericht.

(1) dass der Dampfer *Thea* ordnungsgemäss angehalten ist in Gemässheit der Artikel 2, 3, 15, 16 und 17 des Reglements über die Seeprisen,

(2) dass es vollkommen festgestellt ist, dass der Dampfer *Thea* für die Zeit des Krieges Eigentum des Feindes war, weil nach dem Befrachtungsvertrage des Schiffes dieses für neun Monate vom 12. März d. J. ab durch die Japanische Kompagnie Hokoi Santschis Hossi Raisi gechartert war, in deren Besitz es sich befand, indem es regelmässig Küstenschiffahrt zwichen den japanischen Häfen trieb, dabei

von allen Privilegien Vorteil habend, die nur den japanischen Fahrzeugen zukommen.

(3) dass der Dampfer *Thea*, da er seinen neutralen Charakter verloren, der Konfiskation schuldig ist in Gemässheit des Art. 10 des obenerwähnten Reglements,

(4) dass die ganze Landung des besagten Dampfers, bestehend aus, Dünger und Fischöl, da sie Eigentum des Feindes war, der Konfiskation schuldig ist,

(5) dass infolgendessen, was vorausgeht, der besagte Dampfer und die Ladung als gute Prise anerkannt werden.

Gegen disse Entscheidung ist die Appellationsklage beim Prisengericht Wladiwostok innerhalb Monatsfrist enzureichen. Beim Ausbruch des Krieges wurde in Japan ein Gesetz verkündet, wonach allen Schiffen, gleichgültig ab japanischer oder fremder Nationalität, die Küstenschiffahrt in allen Hafen gestattat wurde. Die japanishe rhederei-Gesellschaft, welche die *Thea* gechartert, heisst mit ihrem richtigen Namen "Hokkai Sanghe Geichy Kaisha," sie besitzt nach Lloyds Register den Dampfer *Tsukushi Maru*.

An appeal was lodged by the owner of the steamship to the Supreme Prize Court at St. Petersburg, which gave the following decision on the case:

Decision of the St. Petersburg Prize Court.

A Wolff telegram states:

On December 3, the High Prize Court at St. Petersburg examined the appeals against the judgments delivered by the Vladivostock Prize Court in the case of the destruction of the German steamer *Thea* and of the seizure of the cargo carried by the British steamer *Arabia*.

The counsel representing the owners of the *Thea* pleaded that the sinking of that vessel by the Russian warships was due to a misunderstanding. He stated that the Russian naval officer who boarded the German steamer, concluded from the statement made in German by her captain, that the ship's cargo, consisting of fish oil and fish manure, came under the category of fish, and that the officer acted according to the erroneous conclusion.

On the other hand, the Vladivostock Prize Court judged the sinking of the steamer to be legitimate on the ground that the participation of the steamer in the coasting trade in the enemy's country deprived her of the privileges of a neutral ship.

The High Prize Court adjudged the sinking of the steamer to be illegal, and therefore quashed the judgment delivered by the Vladivos-

tock Prize Court. In consequence of this decision the ship-owners will lodge a claim of 700,000 marks (about 350,000 *yen*) as damages.

The Prize Court also annulled the judgment delivered by the Vladivostock Prize Court in the case of the confiscation of the cargo carried by the *Arabia*.

III. *The Hipsang Incident.*

The steamer *Hipsang* was fired on and torpedoed by Russian torpedo-boat destroyer No. 7, in North Latitude 38° 55′ 30″ and East Longitude 120° 57′ 30″, on July 16, 1904. Captain Bradley is an experienced seaman, and as he had been in command of merchantmen during the Franco-Chinese, China-Japan, and Russo-Japanese wars, it will be presumed that he was well acquainted with the established usages of war with regard to belligerents and neutral ships. The *Hipsang* had been carrying passengers consisting of a Russian and 22 Chinese and there were no Japanese or contraband of war on board.

When she was first challenged by the Russian vessel, she stopped and steamed backward, behaving properly in this and other matters. When she was again challenged, she disclosed her nationality, and when it became clear that she would be lost, the captain and crew did their best to save the passengers, and only one life was lost. Prior to sinking, she had a full complement and was perfectly seaworthy.

The following is the finding of the Naval Court, as published in the *Japan Times*:

The amazing story of the *Hipsang* has now been made fully public, says the *North China Daily News*. The finding of the Naval Court of Inquiry was delivered on the 23rd inst. and is strongly worded. It is fair to remember that the Court could necessarily hear one side only, but the evidence given seems of an overwhelming nature, and in the language of the President, the firing of a torpedo makes it impossible to regard the Russian destroyer's action as a mistake. The Court endeavoured, but without success, to ascertain the name of the destroyer. It transpired, however, that she was the *Raztoropni*, a vessel of the same tonnage but ten feet longer than the *Ryeshitelni* of Chefoo fame.

The finding of the Court is as follows:

The *Hipsang* was a steam vessel, schooner rigged, of 1040 tons register, official number 112,720, built at Stockton-on-Tees in 1899 and belonging to the port of London.

It appears from the evidence given before this Court that she sailed from Niuchwang on July 15th, 1904, bound for Chefoo and Canton, with a cargo of beans, etc., and a crew of 67 hands, as well as one European passenger and 22 Chinese passengers.

It appears that all went well until the steamer reached Latitude 38° 55′ 30″ N. and Longitude 120° 57′ 30″ E., when, the captain, being on deck with the second officer about 4.15 a.m. on July 16th, a Russian destroyer, name unknown, but numbered 7, came up to the *Hipsang* and fired a shot at her, and although the engines were at once stopped and put full speed astern, the destroyer continued firing and striking the ship, killing and maiming some of the passengers.

It is evident that the *Hipsang* had her lights alight, and after the first shot her colours were immediately hoisted, but notwithstanding this, the destroyer fired a torpedo and struck the vessel, thereby causing her to sink within the space of half an hour, viz., at 4.40 a.m. It is evident that there was sufficient light to see both the class of the vessel, the nationality, and whether the steamer had stopped, day having broken and there being no fog in the vicinity. Boats were then lowered and the destroyer came alongside and assisted to save life, but the crew and passengers were kept prisoners until their release on August second.

The Court, having regard to the circumstances above stated, finds as follows: That the steamship *Hipsang* was sunk by being shelled and torpedoed by a Russian torpedo-boat destroyer, No. 7, name unknown, on July 16th, 1904. Position approximately Latitude 38° 55′ 30″ N., Longitude 120° 57′ 30″ E.

That the master was a fully experienced officer, and, having been in command during the Franco-Chinese War, the China-Japanese War and also during the present war, was fully cognizant of the ordinary established usages of war with regard to belligerents and neutral vessels.

That there was no contraband on board the *Hipsang*, and the only passengers were one Russian merchant, and 22 Chinese. There were no Japanese on board.

That the master appears to have navigated his vessel in a seamanlike and proper manner, and to have acted in a correct manner when challenged by the Russian destroyer, inasmuch as he stopped, ordered full speed astern, and when the way was off the ship, stopped the engines; and further, when he was challenged, he at once made

known his nationality. When a casualty was inevitable, the master appears to have done all in his power to save life.

That the officers and crew appear to have conducted themselves properly and to have carried out their duties to the last moment, and to have used their utmost exertions to save the lives of the passengers, the loss of life from drowning being reduced to one passenger.

That the vessel appears to have been sufficiently manned and seaworthy at the time of the loss.

That the Court desires especially to direct the attention of the Board of Trade and the Foreign Office to the fact that the steamship *Hipsang* was proceeding with due caution between Niuchwang and Chefoo, on a correct course, and that without any just cause or reason was sunk without any warning, by being torpedoed, and that the loss of life was due to shell fire prior to the act of torpedoing the vessel, and that these acts were done by a Russian torpedo-boat destroyer, name unknown, but numbered 7.

It is noteworthy that in contrast to the Russian warship's violence, the *Yugiri*, one of the Japanese torpedo-boat destroyers, was very kind to the crew of this unfortunate steamship *Hipsang*, as will be seen from its master's letter to the *North China Daily News*:

Having been released from confinement at Port Arthur by the Russian authorities, and having walked over to Pigeon Bay, a junk was chartered by our saloon passenger for the sum of 350 rubles to take himself and us from Pigeon Bay to Chefoo, the junk people agreeing for a further sum of 48 rubles to allow 24 of the Chinese members of the crew to accompany us in the junk. So at about 4 p.m. on the 2nd of August, 1904, we sailed out of Pigeon Bay with a fair land breeze, having for stores for the voyage (which might easily have been one of many days) one small white loaf of bread and two pieces of black, left over from our evening meal of the day before, a remnant of cheese, some tea in a bottle, and two or three pounds of sugar. Fortunately the junk had a certain amount of millet in one of her holds and a fair supply of drinking water in a big tub lashed on her forepart.

After passing fairly close to a floating mine, we, some little time after leaving the bay, sighted four Japanese torpedo-boat destroyers steaming in our direction, and as one of these vessels directed her course straight towards our junk, the junk's sails were lowered and we awaited her approach. Steaming close up to us, and receiving the information that we were members of the crew of the *Hipsang*, heav-

ing lines were thrown to us, and the junk hauled alongside the destroyer. We Europeans were then, by the request of the Lieut.-Commander of the *Yugiri*, invited to come on board the destroyer by Mr. Kyosuke Eto, a staff officer of the Imperial Japanese Navy; and we were then invited to sit down at a table, which was soon loaded with delicacies. Lieut.-Commander S. Kagiwada having then heard our account of the loss of the *Hipsang* and our sojourn at Port Arthur, asked us if we were in any need of food or water to take us across to Chefoo; and gathering that we did stand in need of bread, he and his officers most generously gave us a large case of ship's biscuits, seven tins of corned beef, two tins of jam, a bottle of Worcester sauce, about a dozen quart bottles of beer and many bottles of Hirano water, a packet of candles, two large blankets, handkerchiefs and socks, etc., etc., absolutely refusing to heed our protestations when we begged them not to deplete their stores and only to give us the biscuits, the officers laughingly refusing to listen to us, and ordering the Japanese sailors to put their gifts on board the junk. Then, after expressing their sorrow that they could not tow us over to Chefoo, as their vessel was on patrol duty off the Liaotiehshang Promontory, and they could not leave their station, Lieut.-Commander S. Kagiwada and his officers gave us a really hearty send-off, with many a handshake, wishing us good luck and a safe passage across to Chefoo, we giving them a hearty three cheers as we parted company.

The next day, the wind having headed during the night, we found ourselves to the westward of the Miaotao Islands, and unable to make any material progress towards Chefoo; so in the afternoon (as the flood tide was setting the junk bodily to the westward) we let the anchor down and remained.

The next day, the wind being still a head wind to Chefoo, we got under way and stood down for Howki, so as to get in the track of ships coming from Taku Bar, and were fortunate enough to attract the attention of the officer on the bridge of the steamer *Sülberg*; being taken on board that vessel and brought quickly on to Chefoo.

On the 12th of August, 1904, the Jardin Madison Company sent a letter to Consul-General Adagiri, thanking him for the kindness of the Japanese Navy.

IV. *Disasters to Merchantmen Inflicted by Descent of the Baltic Fleet.*

The Baltic Fleet in its descent on the Far East occasioned more than one vivid scene when viewed from the standpoint

of International Law. But here the treatment will be limited to cases of the sinking of vessels in the seas of the Far East.

(I) *The Sinking of the St. Kilda.*

On the 14th of June, 1905, the Dutch mail steamer *Flores* reported that at 3 p.m. on June 11th, when off Diamond Point, North Sumatra, she was signalled by the Russian man-of-war *Dnieper*, which transferred to her the persons and articles, taken from the British steamer *St. Kilda*. According to the statement of the Chinese on board the boat, the *St. Kilda* left Hongkong at 10 a.m. on June 4th, with mail for Japan from Hongkong and Singapore. At 4 p.m. the same day she was sighted by the *Dnieper* and ordered to stop, which order she obeyed. Then the Russians closely examined her papers and cargo, which principally consisted of rice and provisions, and made the crew leave the ship. After a quantity of provisions had been transferred to the Russian man-of-war, which work occupied the whole night, the British steamer was fired on and sunk at 9 a.m. on June 5th. Some of the captured mails for Japan are believed to have been destroyed or mutilated. The captain and other European officers of the British steamer are still detained on the Russian man-of-war, and will be sent to Port Said.

The impression made upon the British by the sinking of the *St. Kilda* was really serious, and the protest addressed to the Russian Government by them had the result reported below:

The press reports regarding the sinking of the *St. Kilda* by the *Dnieper* that the British Ambassador to Russia, on June 18th, handed Count Lamsdorff a strong protest, accompanied by a demand for reparation. The Russian Minister for Foreign Affairs promised to refer the matter to the Minister of Marine, who had no information from the *Dnieper*, the whereabouts of which was unknown. Count Lamsdorff added that last year's assurances to the British Government still held good, and concluded by remarking that these assurances

had been observed for nearly a year, and that the present case was an isolated one probably due to misunderstanding and the disorganisation of Russian naval forces in the Far East.

(II) *The Sinking of the Ikona.*

The Dutch steamer *Perlak* which arrived at Singapore from Tansui on the evening of June 26, 1905, brought the captain and 84 of the crew of the British steamer *Ikona*, and reports that at 1 p.m. on June 19th she was stopped by the Russian man-of-war *Terek*, which transferred to her the above-mentioned seamen, then steamed in a southeasterly direction, apparently towards Manila.

The aforesaid British steamer was sunk by the *Terek* on June 5th about 150 miles north of Hongkong.

Concerning mails on board the *Ikona* and *St. Kilda*, the following report was sent in:

Sept. 12, 1905.

FOREIGN DEPARTMENT:

Notification concerning mails on board the *St. Kilda.*

We have the honour of informing you that the cable package sent from Singapore addressed to the Foreign Department and found missing from the registered portion of the mails on board the *St. Kilda*, sunk by the Russian man-of-war, arrived here on the 30th, prox., on board the *Empress of India*. The transcript of the notification bearing on the incident is also forwarded to you.

We have referred to the Post Bureau particulars of name and date of the consignor of the said missing article.

TOKYO POST OFFICE.

(Enclosure.)

General Post Office, Hongkong, 21st June, 1905.

SIR:

I have the honour to inform you that in rechecking the registered portion of the mail for Japan ex *St. Kilda*, sunk by the Russian cruiser *Dnieper*, a registered article, No. 682, emanating from Singapore addressed to the Foreign Office, Tokyo, was found to be missing, presumably abstracted from the bag by an official on board the *Dnieper*. All our registered bags had been tampered with, the registered articles previously tied up in bundles had been subjected to examination, and then thrown back into the bags loose. The article

in question was entered on the Hongkong-to-Tokyo list at line 11, list I, per S. S. *St. Kilda*, of June 2nd, 1905.

I am, Sir,

Your obedient servant,

(Signed) POSTMASTER-GENERAL.

The Director-General of Posts and Telegraphs, Tokyo.

Aug. 5, 1905.

VICE-MINISTER:

When the bags of mail previously referred to, which were carried by the S. S. *Ikona* and confiscated by the Russian warship, were brought to Miji on July 8th on board the S. S. *Crudra*, and examined at the Yokohama Post Office, the envelope and seal were found torn off and freshly sealed by the Russian warship; four letters had been subjected to examination, and the bag of letters was also unsealed by the Russians, leaving, however, the contents untouched.

KENJIRO DEN,

Vice-Minister of Communications.

(III) *The Destruction of the Old Hamia.*

According to the information furnished by a sub-lieutenant and thirteen other men belonging to the Russian warship *Schouvaloff*, made captives by the Japanese Army on the 17th inst., east of Cape Tsushima, Sakhalin, the British merchantman *Old Hamia*, which was seized by Russians off Formosa and was headed towards Vladivostock with a prize crew on board, was stranded on June 2nd, owing to dense fog, on the east coast of Urup Island in about Latitude 45° 51′ N., while passing through the Etrup Channel. The vessel was burned, and the prize crew landed and pitched their tents. At the scene of the disaster, there remained two officers and fourteen bluejackets who, according to information sent in by the Commander-in-Chief of the Northern Squadron, though provided for one month and a half, will require prompt rescue. However, they must expect help from some local government, because circumstances for the time being prevent despatching a man-of-war for that purpose.

(IV) *The Sinking of the Tetartos.*

As the last case of the sinking of merchantmen, the disastrous end of the S. S. *Tetartos* is here fully narrated.

Important Particulars concerning the *Tetartos* are as follows:

Owner of the Tetartos.

Flenburger Dampfschiff Gesellschaft, Germany.

Agent of the Owner.

Siemssen & Co., Hongkong.

Charterers.

Osaka Shosen Kabushikikaisha, Osaka.

Procedure of the Chartering.

The steamer was chartered by Osaka Shosen Kabushikikaisha in March, 1904, and once rendered back to the owner in November of the same year. In April, 1905, she was again chartered by the same company, on the agreement contained in No. 1 of the documents annexed.

On Contraband.

Regarding the transportation of contraband of war, the negative statement is contained in the first supplementary item of the charter.

Regarding, however, the transportation of coal, rice, provisions, timber, and other similar articles, the owner's consent thereto was obtained as the supplementary charter, No. 2, indicates.

Throughout the two periods of the charter, the steamer was directed mostly for the transportation of rice, sugar, salt, timber, cement, other architectural materials, miscellaneous articles, provisions, etc., between the Main Islands and Formosa. No disturbance had ever occurred between the owner and the charterers concerning the character of cargo.

In May of this year, when the Baltic Squadron was approaching the Far East, the owner demanded of the charterers a warrant to cover possible loss from the enemy, owing to the presence on board of any contraband of war. This was accordingly given to the master, dated May 10 (No. 2), although such a warrant was nothing more than the duplication of what had been already settled on in the charter.

As far as the *Tetartos*, or any other chartered foreign ship, was concerned, the charterers were accustomed to inform the owner of the ship of the nature and volume of the cargo to be shipped, previous to freighting, and no cargo was to be freighted without the master's express consent thereto.

Scene of Disaster.

The steamer was laden in Port Otaru, Hokkaido, with sleepers and square timbers for Tiensin, China, and left for its destined port on May 23rd of that year. While steaming directly thither, she was sunk by a Russian warship, on May 29th, in Lat. 36° N., Long. 132° E. (Cf. the report of the chief manager of the steamer annexed.) The cargo carried on board:

1. Sleepers, 23,195 pieces.
2. Square timbers, 1140 pieces.

(Laden at Otaru for Tiensin.)

3. Consignor, The Teshio Timber Company.
4. Consignee, Wilson & Co., Tiensin.
5. Freight fee, 12,000 yen, altogether.

The Master's Protest.

Regarding the sinking of the *Tetartos*, the master of the steamer lodged a protest, as contained in the transcript, No. 5, with the commander of the Russian warship.

Owner vs. Charterers.

On June 30th of this year, Iris & Co., the agents of the owner, referred the incident to the charterers, in the document annexed, No. 6, to which No. 7 was the charterers' answer. Since then no reference to the matter has taken place between the parties concerned. The owner is going to lodge against the Russian Government the demand for compensation for his losses, together with which the charterers' loss is to be demanded.

Annex I.

AGREEMENT.

Referring to the Charter Party of S. S. *Tetartos.*

Kobe, 28th March, 1905.

It is hereby agreed and understood that the owners allow the charterers to carry coal, rice, provisions, timber and similar merchandise under the terms of the above-mentioned charter party, between ports in Japan and China, also to such ports in Korea, as have been occupied by and are under the control of Japan.

This agreement is to be considered as part of the charter party.

Dated Kobe, 28th March, 1905.

BOTH PARTIES SIGNED.

Annex II.

Osaka, 19th May, 1905.

To the Captain and Owners of the S. S. *Tetartos.*

DEAR SIRS:

The charterers bind themselves not to ship any contraband of war on board S. S. *Tetartos,* and should the steamer be found with contraband of war on board by the men-of-war of a belligerent power during the term of this charter, all damages arising therefrom shall be made good by the charterers.

(Signed) OSAKA SHOSEN COMPANY, LTD.,
Charterers.

Annex III.

The Report of the Tetartos Disaster.

By Mr. Tokugoro Nakahashi, President of the Osaka Shosen Kabushiki Kaisha.

Leaving Otaru on May 23rd, and passing through Tsushima Strait in the night of the 26th, our steamer was to be at Tiensin in one or two days, when on May 28th, a little after 4 p.m., two streaks of black smoke were sighted on the horizon, one of which on nearer approach was found to be a man-of-war. Soon the warship, now recognised as a Russian by her flag, came on the starboard side and ordered our steamer to stop, which order we obeyed. The time was 5 p.m., and the place about 60 nautical leagues S.S.E. of the Shantung Promontory Light. A boat, commanded by Russian officers, was rowed towards us, and held an interview with the master, who insisted that although the cargo on board was contraband laden at a belligerent port, no objection was possible if the delivery was to be to neutral consignees at a neutral port. The officers, without giving any answer, ordered the steamer to follow the Russian man-of-war, and

quitted her after having inspected the cargo. We steamed west all night, knowing nothing of our fate. The said warship was the cruiser *Leon*, of about 10,000 tons displacement, formerly the S. S. *Smolensk*.

On the following day, the 29th, at 7 a.m., we were once more ordered to stop, in Latitude 122° 4′ N., and Longitude 36° E., where no other Russian man-of-war was to be seen.

Three Russian officers came aboard us, and ordered the crew to leave the steamer, without granting even a period of half an hour. We, the crew, jumped into the Russian boat. This was at 8 in the morning. Soon after, the Russian warship fired three shots at the *Tetartos*, which foundered in three hours.

The Japanese part of the crew was confined in a cabin with a capacity of eight men, the Germans in the Russian officers' cabin, and the Chinese in the bluejackets' cabin. We were watched by a bluejacket, and the hotness of temperature and coarseness of food were absolutely intolerable for human beings.

After having witnessed the *Tetartos* sink, the Russian man-of-war steamed south, at 12.30 p.m.

Sect. III. An Observation on the Destruction of Merchantmen.[1]

Argument based on the discrimination between ships to be captured and those to be destroyed.

In the time of hostilities, ships which may be subjected to capture need not be deemed always as lawful prizes; for some of those captured may possibly be released as the result of decisions given by the Prize Court. We should remember that ships subjected to capture and those subject to condemnation do not always fall in one and the same category, so that the release of a captured ship does not necessarily presuppose the unjustifiability of the capture.

To cite a plain illustration, a ship carrying a small quantity of contraband of war may be lawfully subjected to capture, but if the owner of the said contraband is not the owner of the ship, the ship captured should be released. In this case, however, the capture should not be considered as unlawful because of the subsequent release.

[1] Compare this opinion with the opinion of Prof. Westlake.—See Westlake's *International Law*, Part II., pp. 318–321.

Another point to be emphasised is that a ship, however lawfully it may be subjected to capture or condemnation, shall not be destroyed unless under special circumstances. So that it becomes an abuse to destroy a ship under the pretext that it is a lawful prize.

Such a mistake seems to have affected Russian officers and the Russian Prize Court, when they considered that every ship carrying, for instance, "contraband despatches," or "running the blockade," could be detained and made a prize, which then might be disposed of in whatever way they liked, even to destruction.

According to general principles of Prize Law, a prize is first secured by condemnation which is to be delivered by the Prize Court. So destruction of merchant ships without furnishing necessary conditions and taking necessary steps must be illegal.

Now a ship to be legally subjected to detention may be either an enemy's ship or a neutral ship, as the table inserted below will show:

(*a*) ENEMY VESSELS:
1. Enemy vessel proper.
2. Neutral vessel, having a belligerent character.

(*b*) NEUTRAL VESSELS LIABLE TO CAPTURE:
1. When carrying contraband goods.
2. When carrying contraband despatches.
3. When carrying contraband persons.
4. When breaking a blockade.
5. When found under an enemy's convoy.
6. When resisting either visit or search.
7. When under a false flag.
8. When the ship's papers are incomplete or false.

Although a vessel corresponding to any article of the table may be lawfully subjected to capture, the Prize Law cannot be applied to the same extent, for there exist various shades of sanction, according to the kinds of vessels.

I. A vessel owned by the enemy, state or subject, "should be captured, and taken to the Prize Court," may be destroyed

if found unseaworthy, and, of course, "condemned as a prize." [1]

II. A vessel owned by a neutral and under convoy of the enemy—"It should be captured" and "taken to the Prize Court," as an enemy's vessel, and "condemned as a prize." [2]

III. A vessel chartered by the enemy's Government, even though compelled thereto by coercion—"It should be captured," and "taken to the Prize Court," as an enemy's vessel, and "condemned as a prize." [3]

IV. A neutral vessel, carrying contraband goods—"as an illegal neutral vessel should be captured and taken to the Prize Court, and released, after having confiscated its cargo," or "may be condemned as a prize, both ship and cargo included." [4]

V. "A neutral vessel carrying contraband despatches"—as an illegal neutral ship, "should be captured, under any circumstances, taken to the Prize Court, and may be condemned as a prize." [5]

VI. "A neutral vessel carrying contraband persons—It should be captured as an illegal neutral vessel, and under any circumstances brought to the Prize Court and condemned as a prize." [6]

In this way, the disposition of a vessel must first of all be ascertained.

Even in regard to vessels legally subjected to condemnation, nations have their respective laws, and if destruction is to be carried out in full conformity with the provisions of those laws, it should observe a proper procedure.

Conditions which justify destruction vary according to nations and the ships to be destroyed.

[1] The Japanese Prize Regulations, 1904, Arts. II., VII., XXII.; Lushington's Naval Prize Law, 255, 101; Holland's Naval Prize Law, § 19, § 304.

[2] The Japanese Prize Regulations, 1904, Art. II., No. 4; Lushington, 255; Holland, § 19.

[3] The Japanese Prize Regulations, 1904, Art. II., No. 1; Lushington, § 255, p. 53.

[4] The Japanese Prize Regulations, 1904, Arts. V., XX.; Lushington, § 100; Actaeon, 2 Dod. 48; John, 2 Dood, 336 Felicity, 2 Dod. 336; Holland, § 304; Leucade Spinks, 238.

[5] The Japanese Prize Regulations, 1904, Art. VII., Sect. 3; Lushington, § 261, § 205; Holland, § 100, § 105.

[6] The Japanese Prize Regulations, 1904, Art. VII., Sect. 3; Lushington, § 192, § 196; Holland, § 91, § 95; orozembo, 6C. Rob 430.

Some writers discriminate enemy's vessels from neutral vessels, and maintain that those that are neutral should not, in any case, be destroyed, while other writers recognise no such discrimination.

The former school divides itself into two sections: I. Those who consider destruction justifiable only in so far as vessels belonging to the *enemy's state* are concerned. II. Those who propose to include even enemy's vessels of public or private ownership.

A text from Japanese Prize Law in 1894 may be cited as an example of the proposition in the first argument.

The Japanese regulations in the Chino-Japanese war of 1894 provide in Art. XXII. that: If the enemy's state vessels are unfit to be sent to a port, as stated in Art. XVIII., the commander shall destroy the vessels, after taking the crew, the ship's papers and the cargo, if possible, on board his ship. The crew, the ship's papers, and the cargo should be sent to a port, as stated in Art. XVIII.

Prize laws of Great Britain and other Powers, however, have *an enemy's vessel* instead of *a vessel of the enemy's state*. Below the English Regulations will be cited as an example:

100. In either of the following cases:

1. If the Surveying Officers report the vessel not to be in a condition to be sent to any port for adjudication; or,

2. If the commander is unable to spare a prize crew to navigate the vessel to a Port of Adjudication, the commander should release the vessel and cargo without ransom, unless there is clear proof that she belongs to the enemy.

101. If there is clear proof that the vessel belongs to the enemy, the commander shall remove her crew and papers, and, if possible, her cargo, and then destroy the vessel. The crew and cargo (if saved) shall then be forwarded to a proper Port of Adjudication in charge of a prize officer, together with the vessel's papers and the necessary affidavits. Among the affidavits should be one, to be made by the prize officer, exhibiting the evidence that the vessel belonged to the enemy, and the facts which rendered it impracticable to send her in for adjudication.

Japan provided as follows in her revised Prize Regulations of March 7, 1904:

ART. XCI. In the following cases, and when it is unavoidable, the captain of the man-of-war may destroy a captured vessel, or dispose of her according to the exigency of the occasion. But before so destroying or disposing of her, he shall transship all persons on board and, as far as possible, the cargo also, and shall preserve the ship's papers and all other documents required for judicial examination.

1. When the captured vessel is in very bad condition and cannot be navigated on account of a heavy sea.

2. When there is apprehension that the vessel may be recaptured by the enemy.

3. When the man-of-war cannot man the prize without so reducing her own complement as will endanger her safety.

Thus, there being no mention of an enemy's vessel, any vessel under certain circumstances may be destroyed according to a certain procedure.

The Russian regulations were as follows:

The Russian rules in regard to maritime prizes, of March 27, 1895, approved by the Admiralty Board September 20, 1900, allow the destruction of captured vessels under certain circumstances.

ART. XXI. Dans les case extraordinaires où la conservation du bâtiment capturé sera reconnue impossible par suite du mauvais état dans lequel il se trouve, de son peu de valeur, du danger qu'il court d'être repris par l'ennemi, du fait que les ports sont trop éloignés ou bloqués, qu'il constitue un embarras pour le bâtiment capteur ou un obstacle au succes de ses opérations, le commandant est autorisé, sons sa responsabilité personnel, à couler sa capture, après avoir transbordé les hommes et autant que possible le chargement et avoir pris les mesures voulues pour conserver les papiers et objets qui se trouvent à bord et qui pourraient être nécessaires pour éclaire lorsqu'elle sera examinée conformément à la procédure des prises. Le commandant dresse, d'après l'article 21 du code maritime, procèsverbal des circonstances qui ont motivé la destruction du bâtiment capturé.

Art. XL. of the Russian instructions of 1901 provides that:

In the following and other similarly extraordinary cases, the commander of the Imperial cruiser has the right to burn or sink a de-

tained vessel after having previously taken therefrom the crew, and, as far as possible, all or part of the cargo thereon, as well as all documents and objects that may be essential in elucidating the matter in the Prize Court.

(1) When it is impossible to preserve the detained vessel on account of its bad condition.

(2) When the danger is imminent that the vessel will be recaptured by the enemy.

(3) When the detained vessel is of extremely little value, and its conduct into port requires too much expenditure of time and coal.

(4) When the conducting of the vessel into port appears difficult, owing to the remoteness of the port or a blockade thereof.

(5) When the conducting of the detained vessel might interfere with the success of the naval war operations of the Imperial cruiser, or threaten it with danger.

Thus Russia also put no distinction between neutral and hostile vessels, which perhaps is the reason that so many neutral vessels were sunk by her navy.

Conceding that the sinking of neutral vessels was justifiable by the Russian law, nevertheless the following points are certainly open to objection:

I. Conditions justifying destruction were often insufficient, because the commander's individual judgment, upon which everything hung, was far from infallible.

II. Russian officers seem to have been prompted simply by their love of destruction, after defying their own national code; as, for instance, they sank the *Keisho-Maru*, troubling themselves not a whit about the conditions necessary to make such destruction lawful. (See this chapter, Sect. I., VIII.)

III. Russians did not pay much attention to the duty of preserving human lives and cargo, while engaged in the destruction of vessels.

IV. They seem to have often committed a serious mistake in supposing that, whether a would-be prize should be destroyed or not wholly lay at their discretion. For example, they destroyed the *Han-yei Maru* without ascertaining the disposition of the questionable torpedo, not far from Port Arthur, whither

they could have brought the said steamer without the least inconvenience.

V. It is a great mistake to deem that an enemy vessel captured, but not yet condemned, is a prize, and that as she is a prize, it is justifiable to sink her.

After having thus enumerated the cases of Russian illegal conduct, the author, as one of the professors of International Law and as a Japanese subject, cannot but feel somewhat proud of the justice exhibited by the Japanese Navy as regards the capture of vessels and other affairs during the war.

CHAPTER II.

INCIDENTS BEARING ON PRIZE LAW.

As the decisions of the Japanese Prize Court will be treated concisely in Part V., they will not be mentioned in this chapter. The following cases and incidents are here described:

(1) Those cases which were not brought to the Japanese Prize Courts.

(2) Some interesting incidents which have some bearing upon Prize Law.

The cases such as the *Allanton*, the *Arabia*, the *Smolensk*, the North Sea Incident, etc., are also omitted, because these facts are already well known to the west, and are well treated by several writers, while the object of the present work is to bring before the western readers the facts which are perhaps not yet fully familiar to them.

Sect. I. The "Daijin Maru Incident."

Though there are many precedents in Prize Law, the case of the *Daijin Maru* is a peculiar one.

The Japanese sailing ship *Daijin Maru* was captured by Russian torpedo destroyers at Kamoi Promontory on May 5th, 1905. All her crew except one, whose name is Okata, were taken to the Russian destroyer, and a prize crew came on board to take their places. They were destined to Vladivostock, and sailed separately. Meeting a dense fog, and owing to the Russian crew's lack of geographical knowledge, the *Daijin Maru* drifted about and entered the Sea of Korea, where the ship met a Japanese ship, the crew of which captured the Russian crew.

The details are as follows:

The Disaster of the Daijin Maru.

The *Daijin Maru,* having shipped 2000 bags of rice and many other articles at Sakai, Hoki, sailed on April 25th, and was navigating the offing of Kamoi Promontory, about 25 miles from land at 2 o'clock p.m., of May 5th, when 4 torpedo boats under the Russian naval flag suddenly appeared and a rowboat with about 30 officers and men came over to the *Daijin Maru* to examine her. They took away the ship's papers and other necessary articles, and took the master, Yabu, and the crew, consisting of seven men to the boat, leaving Okada, chief sailor, alone with one Russian officer, two petty officers, and a crew of ten. As soon as the boat reached the Russian torpedo destroyer, it was taken on board, and the destroyer sailed away westward. The Russian crew which was left on the *Daijin Maru* directed Okada to sail west. On May 12 they saw land, but being prevented by fog, they anchored 2 miles off the land. On the 13th they sailed southward and saw an island which they thought Askold Island, belonging to Russia, but they did not approach it, because it was sunset, and they were very much afraid of touching a mine. They drifted about until the 21st, when they saw a ship going southward. Okada cunningly deceived the Russians, pretending that this ship was a Russian torpedo boat. The Russians were delighted, and hoisted the Russian naval flag, and signalled with guns and hand flags. Okada took off his overcoat, and shaking it, cried for rescue. The ship, on coming nearer, was discovered to be a Japanese ship. The Russians thereupon locked Okada up, but this Japanese ship compelled the Russians to surrender him, threatening in case of refusal to ram the ship. The Russians obeyed, and Okada, being released, swam to the Japanese ship by aid of a rope and reported that the Russians had no ammunition (though they had guns and rifles), so that it would be better to capture the Russians. Thereupon the sailors of this Japanese ship boarded the *Daijin Maru* and captured all the Russians,

and were about to proceed, taking the *Daijin Maru* in tow also. Unfortunately the rope broke, and this ship being in the service of the Japanese Government, could not delay longer. So leaving the *Daijin Maru*, she arrived at Gensan at 4 o'clock a.m. on the 22nd. Okada was examined there and forbidden to land, and could not find a way to rescue his ship. The ship that rescued Okada and captured the Russians was the *Toto Maru*, owned by the Nippon-Shosen-Kabushiki Co., and in service of the Japanese Government. On the 24th Okada embarked on the *Fujikawa Maru*, a ship belonging to Osaka-Shosen-Co., arrived at Wushina at 7 o'clock a.m. of the 28th, and being released, returned to his home in Sanuki, Japan. The *Daijin Maru*, after being abandoned by the *Toto Maru*, drifted about the offing of Joshin, where she was discovered by a Japanese steamer, the *Taisei Maru*, and turned back to Gensan. The ship's cargo had not received any damage when she was abandoned, but it is said that both cargo and instruments were missing when the ship was finally discovered.

It is a common practice to place a captured vessel in charge of a prize crew to bring her into the port of adjudication, and it is not unusual to meet with some accident on the way to that port. For instance, a drunken officer, having neglected to superintend the crew, and the ship running aground, there arose a question as to who was responsible, the prize officer or the captain; it was decided against the officer. The *Daijin Maru* was a case where a vessel was recaptured by one of Japan's ships, owing to bad weather and Russian sailors' ignorance of their surroundings; but the ship which recaptured the *Daijin Maru* was nothing but a common merchant vessel, which had no right to make a capture, so that the *Daijin Maru* cannot be said to be "recaptured." Then must the *Daijin Maru* be continued as an enemy's prize after the capture at Kamoi? No, for the prize crew were all captured and the vessel was taken away from the enemy. Only she was abandoned by the ship that rescued her, not recaptured. Legally speaking, what is the status of such a ship? Suppose that it was recaptured

by a Russian warship. In such a case, which is it more correct to say, that this ship was captured twice, or that this ship was continuing in the captured condition? The *Toto Maru* had no right to capture her, and went away leaving the *Daijin Maru.* How does this action cancel the Russian warship's right of capture obtained at Kamoi? These points must be considered carefully, yet it must be observed that the Russians had lost their prize right in the *Daijin Maru*, because she was left with no person on board and the Russian crew were taken prisoners when she was abandoned.

The Japanese Government considered it a case which did not come under the adjudication of a Prize Court. This is evident because the *Daijin Maru* was not captured by a Japanese warship. In the end the ship was returned to her original owners, and there was no question of salvage in connection with her return.

Sect. II. The Prometheus Case.

The Osaka Shosen Co. as Owners of the S. S. Prometheus.

The question "What is contraband of war?" has had an answer in the present case which sets an interesting precedent. The owners of the S. S. *Prometheus* tried to cancel her charter (with the Osaka Shosen Co., the charterers), on the ground that rice and sugar, which they proposed to ship by the steamer, were "absolute" contraband of war according to the declaration of Russia; while the charterers contended that as rice and sugar were "conditional" contraband of war, it was neither a violation of International Law nor of the charter party to ship those articles between the commercial ports of Japan; the result being that the case was brought to M. Hewett, as arbitrator, and then to the Court of Hongkong, in both of which decision was given in favour of the Osaka Shosen Co.

The following are briefly the facts of the case:

The charter-party was signed in Hongkong, on the 10th of February, 1904, between Messrs. Sander, Wieler & Co., as

agents for the captain and owners of the S. S. *Prometheus*, and Mr. T. Anima, manager in Hongkong of the Osaka Shosen Co.

Among the conditions of the charter-party was the following: That the vessel was to be at the sole disposal of the charterers, or their agents, to carry cargo and passengers, for lawful voyages to certain ports of the world (open ports only), ports in the Amur district, ports north of Vladivostock, and inter-port trading in the Philippines being amongst the places excluded; the agreement not to be cancelled in the event of war being declared; the charterers to pay at the rate of $6750 per mensem for the use and hire of the steamer; disputes to be settled by arbitration; and in case of war the steamer not to be directed to any blockaded port, nor to carry any contraband of war.

The charter-party became operative on the 22nd of February, 1904, by the steamer's leaving Hongkong on that day. She arrived at Takao on the 25th of the same month. At Takao and Anping she took on board a shipment of rice and sugar for Yokohama and Kobe, completing the unloading of the cargo on the 18th of March. Up to that day the captain had not done anything further than to give to the Hongkong office of the Osaka Shosen Co. or its agents some remarks concerning the contraband clause of the charter-party; but on the 19th of March he refused to ship rice and other provisions between ports of Japan on the strength of a telegraphic instruction received from the ship owners, the telegram containing the words, "Try to cancel the charter." He then demanded, under date of the 23rd of March, to have the ship's hire increased by $3250, if contraband of war was to be shipped.

Here followed various negotiations, both verbally and in writing, between the captain and the Kobe office of the Osaka Shosen Co., but without agreeing whether rice and other provisions were to be treated as absolute contraband of war or not.

It thus appears that the Osaka Shosen Co. was driven to subcharter the steamer for the remainder of the term of the charter-party, and unloaded all the cargo already shipped at

Kobe, and had the steamer leave Kobe on the 26th of March for Nagasaki, where she was subchartered to a third party.

Principal Points Insisted on by the Ship Owners:

1. Rice and other provision are absolutely contraband of war according to the declaration of Russia. It is the right of a belligerent state to decide what is contraband of war. If a neutral state thinks the decision to be unlawful, there is no other way to remedy it than to declare war against the belligerent state.

2. Navigation between Japanese ports, such as Yokohama, Kobe, and Moji, is on the route chartered by the Government to the Osaka Shosen Co.;[1] consequently it is unlawful for a foreign ship to navigate on such a route.

3. Whatever may be the meaning of contraband, rice and other provisions have actually been declared by Russia as absolute contraband. It is therefore practically placing the S. S. *Prometheus* in danger to make her carry such articles. As International Law is an extremely vague science, as it were, the determination of the nature of contraband deduced from such a law cannot be relied upon in a case like the one in question.

Principal Points Insisted by the Osaka Shosen Co.:

1. That rice and other provisions are conditionally contraband of war is plain enough in International Law. The declaration of Russia, which does not conform with the generally accepted International Law, cannot bind neutral states. Besides, the charter-party, which was signed on the 10th of February, had been made out four days before the Russian declaration, which was issued on the 14th of the same month. Further, the charter-party may be said to have been made out twenty days before the Russian declaration, if we take the date of its publication in the *London Gazette*, which was on the first of March. Again, if we take the date of its publication at

[1] In short, the owners wanted to declare the object of the charter-party itself to be unlawful by insisting upon its being unlawful for the S. S. *Prometheus* to navigate on the above-mentioned route according to the Law of War of 1756.

Hongkong, which was on the 9th of March, the charter-party antedates the declaration by twenty-nine days.

It therefore admits of no doubt that as the charter-party had been made out prior to the issuing of the Russian declaration, both contracting parties must have concluded the contract with the notion of looking on the words "contraband of war," as referring (in that charter-party, in the ordinary sense of the words) rice and other provisions as conditional contraband of war.

2. Navigation between the ports of Japan is not on the route chartered by the Government to the Osaka Shosen Co., according to Arts. X. and XI. of the Anglo-Japanese Treaty of 1894, and Arts. IX. and X. of the Treaty between Sweden and Japan of 1896.

3. The objection of the ship owners to carrying provisions as contraband, and also their claiming it unlawful for a foreign ship to navigate between the ports of Japan, is not bona fide, but must have been made with the object of obtaining, if possible, a new charter at a higher rate, as they offered to withdraw their objection if the charterer would pay an extra consideration.

The court for arbitration was opened at the office of the P. and O. S. S. Co., Hongkong, on the 14th of July, 1904, and the inquiry was completed on the 21st of Sept.[1]

The following are the decisions on this case:

Mr. Hewett summed up the case in the following terms:

Although I have agreed to state a case for the consideration of the Court, I propose to go fully into the argument. The charter party is the first document to be considered. It has been shown that the written clauses in such an agreement should deserve special attention as being more likely to express the intention of the parties making the agreement. This does not call for further explanation, as it is clear that when an Association, such as the Osaka Shosen Kaisha, engaged in the shipping business, requires from time to time to charter vessels for different trades, it is a convenience for them to have a

[1] The Text of the Arbitration and Decision of the Supreme Court of Hongkong, mentioned in this section, are taken from "Osaka Shosen Kaisha *versus* Owners of the S. S. *Prometheus*," printed at the *Daily Press*, Hongkong.

set form of charter party ready printed; but as the terms of the individual charters must vary, special clauses may be added, while some of the regular clauses may be changed or deleted.

Now, in this Charter Party I find the following are the special written additions to the printed form:

Clause 2. "This agreement not to be cancelled in event of war."

Clause 16. "The steamer is not to take our Hongkong Government Passenger Certificate."

Clause 36. "Should the steamer be required, in accordance with the Japanese Law, to undergo the Marine Authorities Survey, the charterers may order the ship to do so, at their expense, without prejudice to this charter party."

Clause 37. "In case of war steamer not to be directed to any blockaded port, nor carry any contraband of war."

Clause 38. "Saloon and all available staterooms to be at charterers' disposal."

While it is necessary to take the charter party as a whole, the above are the clauses to which we must chiefly look in order to ascertain the intention of the parties. The charter party does not appear to have been hurriedly drawn up (Foard, page 257), for we have the evidence of Mr. Becker, under whose directions the agreement was entered into, that the negotiations lasted some days, and were completed some little time, or a few days, before the charter party was actually signed; while Mr. Arima could not definitely state this, he did not contradict it. The intentions of the parties to the agreement are to my mind quite clear. War was momentarily expected to break out between Russia and Japan, and a special clause was therefore inserted in the charter party that should war take place the charter party was not to be cancelled. Clause 37 states the steamer was not to carry contraband of war or proceed to a blockaded port. The dispute which has now arisen hinges chiefly on this clause, not that the clause is not clear, but because there is a difference of opinion between the two parties as to what is contraband of war under existing conditions. I will deal with this question later. Another point which has been raised is as to whether, when the *Prometheus* was chartered, it was intended to run her between Japanese ports, and if so whether this was done with the consent of the owners. Mr. Arima has stated very clearly that when he chartered the *Prometheus* under instructions from his head office, he understood she was to be used on one of the regular lines of the Osaka Shosen Kaisha, probably between Japan and Formosa. In order that there should be no doubt on this and other points, Mr. Arima wrote on 19th February to Messrs. Sander, Wieler & Co., and that firm replied on the following day confirming this; the agents

further raised no objection when the vessel sailed for Formosa to load cargo for Japan, although they were notified on the 20th February as to what the Osaka Shosen Kaisha intended to do with the vessel. Frequent reference is made in the charter party to the carrying of passengers, but while it is specially written in the agreement that a Hongkong Government Passenger Certificate is not to be taken out, another clause (No. 36) is added providing for a Japanese survey. In view of this I must agree with Mr. Hastings in his contention that at the time the charter party was signed it was understood by both parties that the vessel would engage in the Japanese interport or colonial trade.

Mr. Hastings has urged that the owners endorsed the action of their Hongkong agents by not objecting to what they had done. The first protest which was received from the owners appears to have been in a telegram received by the Master of the *Prometheus* at Kobe on the 19th March (B 8). The owners apparently had become nervous about the safety of their vessel, Lloyds having declared rice, sugar, and provisions, between Japanese ports, to be contraband; they therefore instructed the commander to decline this cargo, and they added "Try cancel." I take this to mean that even then they did not repudiate the action of their agents, but not liking the business in which their vessel was engaged, wished to cancel the charter party if possible. Another telegram a week later instructed the commander to act up to the terms of the charter party but to decline contraband and blockaded ports (which was forbidden by the charter party). We have no evidence as to when a copy of the charter party reached the owners, but as the negotiations were concluded about the 6th February, presumably the details of the agreement were before them when they telegraphed to the Commander on the 26th March.

Mr. Wilkinson has stated that the agents at Hongkong had no power to undertake that the *Prometheus* should be engaged on an unlawful voyage, or in an unlawful manner, and further that the letter of 23rd March, addressed to the Osaka Shosen Kaisha showed that they had not the power to alter the terms of the charter party, as they then stated their principals required an additional monthly payment of $3250 if the *Prometheus* were employed in the interport Japanese coast trade and carried cargo which "may be considered contraband of war." The charter party clearly states that contraband was not to be carried. The Osaka Shosen Kaisha, while maintaining the cargo they wished carried was not contraband, offered to be fully responsible if it were proved to be contraband. The owners demanded extra payment not *for carrying contraband*, but for carrying what *may be considered contraband*. As I will show later I think there is

a very wide difference between the meaning of these two terms. I have already stated that in view of the wording of the charter party, and the letters which passed between the signatories, I hold the opinion that it was understood at the time the agreement was entered into that the vessel was to be engaged in the coasting trade, nor has this been denied by the Hongkong agents of the steamer. The position of affairs had very much changed between the beginning of February and the end of March, and the cost of chartering steamers had much increased. This by itself is no reason why an additional demand should have been made upon the charterers unless, as stated by Mr. Wilkinson, it is shown that they did in fact wish to have the terms of the charter party altered.

With regard to the cargo actually carried, it would appear that the master of the *Prometheus* raised some objections to taking rice and sugar to Japan before he left Hongkong, but this objection seems to have been overcome, for subsequently he contented himself, until arrived at Kobe, with merely writing a letter to the local representatives of the Osaka Shosen Kaisha at each port, drawing their attention to Clause 37 of the charter party. In view of the then condition of affairs in the Far East this was a very proper step for him to take in the interest of his owners. In his examination the commander of the *Prometheus* stated he made no protest against rice or sugar being shipped in Formosa for Japan, and accepted it as a matter of course "from what he knew at the time." He did not recollect having had any dispute on the subject with the Osaka Shosen Kaisha in Hongkong. He made his first formal protest at Kobe in consequence of telegraphic instructions from his owners. The Osaka Shosen Kaisha were anxious for the *Prometheus* to continue on her voyage from Yokohama via Kobe and other ports to Formosa, and they therefore wrote to the commander asking him for a definition of contraband. He replied that it was the business of the charterers to ascertain what might be considered as contraband. The next day, after receipt of his owners' instructions, he wrote to say that the cargo then being shipped was contraband. This the Osaka Shosen Kaisha denied. Holding this view the Osaka Shosen Kaisha offered to guarantee all losses which might arise were the cargo in question to be contraband. The question of paramount importance however is what is, or is not, contraband; and whether a cargo of lumber, rice, foodstuffs, etc., etc., shipped from Kobe to Formosa comes under the heading of contraband of war. A mass of authorities have been quoted, but as these will be considered by the Court I will not discuss them in detail. That Russia intended to make rice and foodstuffs imported into a Japanese port contraband of war is, I think, made abundantly clear by the Offi-

cial Declaration. I cannot follow Mr. Hastings in his argument when he translates the words *de même que* "such as," and when he says the words *le riz, les vivres,* are controlled by the preceding words "*en général tous les objets destinés à la guerre,*" etc., etc. Authorities have been quoted to show that articles in time of war may be divided into three classes: 1. Munitions of war of all descriptions. 2. Equivocal articles. 3. Articles of an entirely peaceful nature. Mr. Wilkinson laid great stress upon the fact that it was in the power of a belligerent to make anything and everything contraband, and the only way by which a neutral might protest against what he considered an illegal or unreasonable declaration was by an appeal to arms. Now Russia's declaration as to what is contraband of war is so far reaching, and allows of such a wide interpretation, as to include almost all articles of agriculture and of raw and manufactured produce, which, under ordinary conditions during times of peace, are imported into Japan and Formosa. Now, if we admit Mr. Wilkinson's argument, Russia might have gone a short step farther and declared that *everything* imported into Japan might in some way or other be of use to the enemy and was therefore contraband. I consider such an argument must be held to be entirely fallacious. If by a simple declaration, it is in the power of one belligerent to declare as contraband the whole of the neutral trade of her enemy, this practically amounts to a blockade of the enemy's country without the first belligerent incurring the risk and obligations of enforcing an effective blockade with her navy. A declaration by Russia, emphasised perhaps by an occasional cruiser raid from Vladivostock, might therefore put a stop to the whole neutral trade of Japan and amount to a blockade. Mr. Hastings has quoted authorities to show that neutrals have rights as well as belligerents during times of war, and are entitled, within certain restrictions, to continue carrying on a peaceful trade with one or both of the belligerents, so long as they maintain their neutrality. This is very clearly set forth by Wheaton in his chapter on "Rights of War as to Neutrals," pages 690 to 693. This is too long to quote in full, but I will make a few extracts. Here it is stated:

(§ 510 C.) "A blockade must be absolute, that is, it must interdict all commerce whatever with the blockaded port."

(§ 512.) "The definition of a lawful maritime blockade, requiring the actual presence of a maritime force stationed at the entrance of the port, sufficiently near to prevent communication as given by the text writers, is confirmed by the authority of numerous modern treaties, and especially by the Convention of 1801, between Great Britain and Russia, etc., etc."

All due consideration must be given to so high an authority on

shipping and marine insurance as that referred to by Mr. Wilkinson, but we must also bear in mind that while the insurance world may consider certain articles as contraband and regulate their business accordingly, it does not necessarily follow that the articles are contraband. A war having broken out, insurance companies naturally look to it that if they are called upon to accept greater risks they are entitled to extra remuneration, and therefore they may, in the conduct of their business, declare certain articles as contraband, but it does not necessarily follow that they are contraband. I am strengthened in this opinion by the evidence given by Mr. Whittal, who stated that in anticipation of a declaration from Russia extra premiums had been charged on rice shipped to Japan; that is to say, the insurance companies, by charging extra premiums, had placed rice in the list of contraband of war before a declaration to this effect had been issued by the Russian Government. Thus, when the owners of the *Prometheus* telegraphed to the commander that Lloyds considered certain articles as contraband, while it showed it was held by some that a certain risk was run by carrying these goods, it did not necessarily imply that the goods were contraband, or that Russia would be entitled to confiscate the goods or the neutral vessel carrying them in the event of seizure. As I have already stated, I consider there is a wide difference between what "may be considered as contraband," and what is actually contraband of war, both from a marine insurance and from a shipping point of view. The evidence before us in my opinion clearly shows that the intention of the charterers was to engage the vessel in the Japanese coasting or colonial trade, and that this was understood at the time by the agents of the *Prometheus*. Under these circumstances it does not appear to me likely that had the owners, or their agents, suggested inserting a clause to the effect that the vessel was not to carry "what may be considered contraband," the charterers would have agreed to such a condition. Knowing as they did that war would probably break out before long, they provided against all reasonable dispute by the insertion of the clause actually in the charter party (No. 37); but it appears to me most improbable that they would have chartered a vessel for the coasting trade, with so vague and far-reaching a clause as "what may be considered contraband of war." At all events no evidence was brought before me to show that this was the intention of the agents when drawing up the terms of the charter party. I cannot agree that the only means by which a neutral can protest against interference of his trade with one belligerent is by going to war with the other belligerent whose declaration he considers unreasonable. Switzerland has a considerable trade with Japan, but clearly she cannot go to war with Russia should she

consider her trade with Japan has been unduly interfered with in consequence of the former's declaration regarding contraband. If the only risk a great power runs by making a "grossly unreasonable" declaration as to contraband, while she is at war with another power, is to expose herself to "the hostilities" of the objecting neutral powers, the question resolves itself not into one of right, or of international law, but solely into one of might. A great power could thus with impunity ruin the trade of her smaller and weaker competitors without risk of harm to herself. Mr. Hastings quoted authorities to show that neutral powers had the right to protest against an undue declaration with regard to contraband. We understand England and the United States of America have already protested against a part of Russia's declaration; and an instance has been cited when, in 1795, during war with France, England had to modify her declaration as to certain foodstuffs being contraband, in consequence of the protests of Sweden, Denmark and the United States of America.

With regard to the particular voyage and cargo concerning which this dispute has arisen, though it is true foodstuffs and timber had been declared contraband, I do not hold, as explained above, that these need necessarily be contraband. It has been shown that the ports to which it was intended to despatch the *Prometheus* were neither blockaded by the Russians, nor were they ports of military or naval equipment. Nothing has been adduced to show that Mr. Arima's statement is not correct, viz.: that it was an ordinary voyage, and the cargo was of an ordinary nature, not intended for the use of the enemy's forces or for use even in the remotest degree against the Russians. If I am correct in this, the master and owners of the *Prometheus* were not justified in refusing to allow the vessel to load the cargo and to continue on her voyage to Formosa, and the charterers had done all that could be reasonably expected of them in offering to take all risks should the cargo in question be found to be contraband.

Another point raised by Mr. Wilkinson was the illegality of the voyage. In this he was supported by Mr. Whittall. I will not follow Mr. Wilkinson into his arguments in detail or fully discuss his authorities, as these also will be considered by the Court; but I would here remark that what I have already said with regard to insurance companies again applies. The Secretary of the China Traders' Insurance Co. has probably as extensive, if not the most extensive, knowledge of the customs of insurance business as carried on in the Eastern hemisphere as anyone engaged in the business, and his opinion must therefore receive fullest consideration; but here again he spoke from an insurance point of view. I do not feel called upon to deal with the argument as to the position a neutral vessel may assume by engaging

in a "privileged" trade, the question to my mind being whether the trade between Japan and Formosa is privileged. I was in some little doubt at first as to whether this point should be referred to the Court, but in view of the authorities quoted by Mr. Wilkinson decided it was best to do so, the more so as he was supported in his contention by Mr. Whittall. I think, however, that Mr. Hastings is correct in his argument on this point. The new treaties with Japan, and I refer particularly to those of Great Britain of 1894, Articles X. & XI., and Norway of 1896, Articles IX. & X. provide for equality of treatment —so far as the treaty port trade is concerned—between vessels of those nations and Japanese vessels. While, further, it is a fact that both under existing treaties, and prior to the signing of the British Treaty of 1894, "foreign vessels," that is to say non-Japanese vessels, were freely allowed to trade with certain other ports in Japan under special permits, and this privilege is extended to "foreign" vessels to the present day, irrespective of whether Japan is at war or at peace. The fact that vessels other than Japanese may not of recent years have traded between the ports (or some of them) to which the Osaka Shosen Kaisha wished to run the *Prometheus* does not invalidate their right to doing so should their owners desire.

I have attempted to review the arguments brought before me, and would now state that the questions which I ask be considered by the Court, before a final decision is arrived at, are as follows:

Firstly: Whether under the terms of Russia's declaration the cargo intended for shipment from Yokohama and Kobe to Kagoshima, Okinawa, Keelung, Anping and Takao by the *Prometheus* was contraband.

If so, whether Russia's declaration in this respect is binding upon neutrals, or whether, as urged by Mr. Hastings, it is *ultra vires*.

Secondly: Whether the line on which the Osaka Shosen Kaisha wished to employ the *Prometheus* is a "privileged" line and, if so, was it therefore unlawful for a neutral ship to engage in such a trade.

Thirdly: Whether in view of all the evidence brought forward the Osaka Shosen Kaisha attempted to violate, or alter the terms of the charter party as a whole, but particularly with reference to clause 37, by instructing the commander to load a cargo of foodstuffs and timber, and to proceed to the ports named in their letter of 27th April, 1904.

EDBERT ANSGAR HEWETT,

Hongkong, 26th September, 1904. *Arbitrator.*

THE COURT'S DECISION.

The questions referred to the Court by the Arbitrator were argued before Sir H. S. Berkeley, Chief Justice, on the 7th, 8th, 11th & 12th November, 1904.

Hon. E. H. Sharp, K.C., instructed by Mr. John Hastings, appeared on behalf of the Osaka Shosen Kaisha; Mr. M. W. Slade instructed by Mr. C. D. Wilkinson on behalf of the owners of the S. S. *Prometheus*.

His Lordship delivered on November 24th the following judgment:

. . . My answer to the first question put to me by the arbitrator must, therefore, for the reasons I have given be (1) that the cargo intended to be loaded by the charterers on the steamship *Prometheus* was not contraband of war within the meaning of the charter party; (2) that the Russian declaration constituting provisions unconditional contraband was not binding upon neutrals who were no party thereto, and consequently has no bearing upon the construction of the charter party between the Osaka Shosen Kaisha and the owners of the ship *Prometheus*.

The remaining questions, the second and third put to me by the Arbitrator, present no difficulty. With respect to the second question, in my opinion the engagement of the *Prometheus* by the Osaka Shosen Kaisha for employment in the Japanese coasting trade, that is to say, in the interport trade of Japan, was in no sense illegal. The propriety of such voyaging was never questioned by anyone until the solicitors for the owners took the point before the Arbitrator that the interport trade of Japan was a privileged one; and that consequently it was illegal for the neutral ship *Prometheus* to engage therein during the existence of hostilities. In other words, that such trading came by analogy within the principle of what is known as the Rule of the War of 1756, rendering the ship liable to be captured and taken to a Russian Prize Court for adjudication! It is not necessary to consider whether the Rule of the War of 1756 is obsolete, as contended by Mr. Sharp, or not; for in my opinion even if it were in full force and effect it would have no application to the facts of this case. To have made that rule apply, the ports traded to must have been totally closed before the war to all but Japanese subjects; and must only have been opened to others after the war and because of the pressure and necessity of the war due to the preponderating naval supremacy of the belligerent enemy. In point of fact no such pressure and necessity has existed in this war on the part of Japan. Owing to the fortunes of war, the naval forces of Japan have from the outset of the war gained an ascendancy securing immunity to her ports from the naval force of the enemy. It is found as a fact by the Arbitrator that since a time prior to 1894—that is to say for a period of ten years previous to the charter of the *Prometheus*—foreign vessels, meaning thereby vessels other than Japanese, have been allowed to trade freely under treaty with certain ports ordinarily known as treaty

ports, and under special licence with certain other ports known as non-treaty ports; and it appears as a further fact that the Osaka Shosen Kaisha had permission from the Japanese Government before the outbreak of war to employ foreign ships in trading to non-treaty ports. The Arbitrator adds that this privilege was extended by Japan to foreign vessels irrespective of the question of peace or war. I entirely concur in this finding, which is supported by clear documentary evidence. In my opinion, trading under the licence of one belligerent given under such circumstances does not render a neutral ship liable to capture by the other belligerent. My answer to the second question is that the line on which the Osaka Shosen Kaisha intended to employ the *Prometheus* was not a "privileged" one; and that, at the time when the master of that ship refused to load provisions for a voyage to Japanese ports between Kobe and Formosa, it was lawful for that neutral ship to engage in that trade.

Coming now to the answer to be given to the third question put by the Arbitrator. It is contended on behalf of the owners that whatever may be the true meaning of contraband of war, and whatever may be the proper view to take with respect to the validity or otherwise of the Russian Declaration making provisions unconditional contraband, yet as Russia had as a fact, whether rightly or wrongly, declared provisions unconditional contraband, and as the *Prometheus* would as a fact, rightly or wrongly, have been captured if found by a Russian cruiser carrying provisions, and have been taken to a Russian Prize Court for adjudication, it was, in view of the exception in clause (1) of the charter party with respect to "arrest and restraint of Princes, Rulers, and Peoples," the duty of the charterers to refrain from loading on the *Prometheus* anything that would or might render such ship liable to be captured and taken in for adjudication; and that if the charterer in disregard of that alleged duty offered cargo the carriage of which would render the ship liable to such restraint, it was the right and the duty of the Master to decline to receive and load, and if already loaded, to unload such cargo. It may be conceded that where there is as a fact a risk of capture, such risk would amount to a "restraint of Princes" within the exception in Clause (1) of the charter party, whether the capture would or would not be lawfully made, *i.e.* made in accordance with international law; but to entitle the owners of the *Prometheus* to the benefit of that exception, the risk apprehended must have been so direct and imminent as to render capture almost certain. The cases do not go beyond this, that the master of the *Prometheus* might have unloaded as he did at Kobe, had he had a reasonable apprehension of his ship being captured had he attempted to sail from Kobe, with the goods on board.

There was, however, at the time he unloaded and refused to carry provisions no cause for such apprehensions on the part of the master. Japan had at that time secured a naval superiority which must have or should have freed the master from any such apprehension. There were at that time practically no Russian ships available for making captures, and none had as a fact ever been made on the trade route which the master was directed to follow. The case of the Nobel Explosive Company *v.* Jenkins and Company does not apply, for in that case there was, at the time that the master refused to sail with the plaintiff's goods on board, a serious danger of their being seized and confiscated by the war ships of the belligerent enemy then lying in and round the Port at which he landed such goods. He was therefore, under such conditions, justified in landing the goods and in refusing to carry them. In the case just quoted the master had a reasonable and well-founded belief that the vessel, if she sailed with the plaintiff's goods on board, would be stopped and the goods confiscated, whereas in the present case the master of the *Prometheus* had no ground for entertaining any such belief, and as a matter of fact did not entertain any such belief. The special case will now be remitted to the arbitrator, who will guide himself in making his award by the answers which I have given to the questions put by him to me.

Sect. III. The Ship for Scientific Exploration of the North Pole.

During the Russo-Japanese war there occurred only a single question as to a vessel for scientific purposes. The facts are as follows:

On the 28th of May, 1904, the Swedish Minister for Foreign Affairs announced that a Russian steamer was about to sail for the North Pole on scientific explorations, after coaling at a port of Norway. He asked the Japanese Minister at Stockholm if such coaling would be considered a violation of neutrality. The Japanese minister answered that the Japanese regulations regard coal as contraband only when from its destination or other circumstances it is presumed to be intended for the use of the enemy's army or navy. Consequently the case mentioned by the Swedish Minister for Foreign Affairs would not constitute a violation of neutrality.

Sect. IV. The Independent Affair.

A chartered vessel of the Osaka-Shosen-Kaisha, loaded with rice, *sake*, wine, and other articles, and destined to Newchwang, entered Chefoo, where the Chinese Custom Officers treated these articles as contraband goods, and demanded that they be landed. The Japanese Consul, Mizuno, protested against it. Dated August 30, 1904, he despatched a telegram to Mr. Uchida, the Japanese Minister to Peking, in the following sense:

"The *Independent*, a chartered vessel of the Osaka-Shosen-Co., destined to Newchwang and loaded with rice, *sake*, money, and other contraband goods, entered here to-day and was commanded by the Chefoo Customs to land her cargo. I asked of the Chief of Customs the reason, and was answered that there were instructions not to allow the passing of contraband goods from neutral ports (as Hongkong) to belligerent territories, and of course it must be treated as if they were sent from a belligerent country. I protested that a belligerent state has the right to carry goods necessary for war, and the customs have no reason to interfere. Finally it was agreed to ask the commissioner for instructions, and not to interfere with her cargo until the arrival of a telegram bearing instructions."

On the morning of September 1st Baron Komura received a telegram from Minister Uchida that Wai-wu-pu promised him to despatch on the following day instructions through the Commissioner to the Taotai and President of the Customs to allow the departure of the *Independent*. Next day a telegram came from Consul Mizuno with the information that the *Independent* had departed for Yingkow without objection.

On the 6th of October Baron Komura sent a telegram to Consul Mizuno asking whether it was some special overture made to the *Independent* in allowing her departure for Newchwang or whether all the other Japanese merchantmen entering Chefoo thereafter would be treated in the same way, not being

hindered as to their departure or compelled to land their cargo.

Dated October 7, 1904, Consul Mizuno reports that although neither the Taotai nor the Commissioner are prepared to commit themselves to any categorical statement, yet they assured him that they would treat any such steamer in the same way as the *Independent*, that is to say, would not interfere with her cargo.

Sect. V. Claims for Damages Caused by Capture.

In Japan the claim for damages was not to be adjudicated by a Prize Court. For this purpose, a special committee was created by the following resolutions:

RESOLUTION OF THE CABINET CONCERNING COMPENSATION FOR DAMAGES CAUSED BY CAPTURE.

The following notification was received from the Cabinet on the 14th day of the 5th month of the 37th year of Meiji:

It has been resolved by the Cabinet Council that compensation for damages incurred on account of capture shall not be adjudicated by a Prize Court, but shall be decided after hearing the opinion of a board to be specially appointed for the investigation.

As the President of this committee, Dr. Itchiki, and later, Dr. Okano were elected. One of the members, Mr. S. Nakanisi made concise inquiries into the details of several cases which were brought to the committee. Below is the list of the cases.

1. The case of *Crusader*. (British.)
2. " The *Kensington*. (British.)
3. " The *Queen Cristina*. (British.)
4. " The *Mukden*. (Russian.)
5. " The *Sheikh*. (British.)
6. " The *Saxon Prince*. (British.)
7. " The *Si-shang*. (British.)
8. " The *Eastry*. (British.)
9. " The *Linchnden*. (British.)

Among them were four vessels which were released after the discussion. One concerns the cargo of the Russian vessel *Mukden*. Three others, concern the vessels detained, but released before coming to the ports for adjudication. Only one, the *Eastry* case, was accepted by the committee, and consequently the Japanese Government paid the compensation.

The inquiries made by the author's learned friends, Drs. Okano and Itchiki and Mr. Nakanishi, members of this committee, show that the work they accomplished was remarkably concise, clear, and thoroughly discussed.

The author refrains from treating all of them in this work, as they will be specially treated in a separate essay. Only a brief account of some of the cases are here given.

Case I. *The Crusader.*

Résumé of the report of the committee of the investigation for damages concerning Prize Officers, on July 31st, 1906.

The inquiries were made concerning the claims for damages in the *Crusader* incident. The details and their effects are here given.

The *Crusader* is a British ship owned by the Eskside Steam Shipping Company, registered tonnage 2744, and of tonnage 4209. On the 2nd of September, 1904, she departed from Portland, Ore., U. S. A., with timbers on board for Shanghai and Ta-koo, China, via Moji in Japan. The Imperial Japanese torpedo boat stopped her at 9.20 a.m. on the 22nd day of the same month while in Tangarn strait. During the stop the captain of the torpedo boat asked the master of the *Crusader* as to the ship's destination. The master said that the destination was Shanghai, while Japanese subjects on board the vessel said that she was bound for Moji. The discrepancy between the master's admission and that of the others aboard made necessary an examination of the ship's papers, but owing to the rough sea it was more expedient to order the vessel to the port of Hakodate. As the result of the examination which was ultimately made, she was allowed to continue her voyage, at 12.45 p.m. on that day.

Concerning this incident the owner claimed damages through the British Minister at Tokyo. The claim is as follows:

That the *Crusader* was detained on two occasions by Japanese war vessels, once in September, 1904, and again in March last, but that the owners do not ask for compensation for the second of these incidents. The British Minister at Tokyo was instructed to bring this

claim to the notice of the Japanese Government and to take into consideration only the detention of five hours and ten minutes suffered by the *Crusader* at Hakodate, the alleged detentions at Moji and Woosung being in the opinion of the British Government too remote a consequence of the vessel's detention at Hakodate to warrant their inclusion. The above-mentioned period of detention was arrived at by adding together the time occupied by the vessel in reaching Hakodate from the point at which she was stopped, and in returning subsequently to the same point, and the time during which she remained at anchor.

A belligerent is entitled to search a neutral vessel on the high sea, and, if he sees fit, seize the vessel at his own risk and take her before a Prize Court. This involves, however, the employment of vessels which are suitable for the purpose, and if, as in the case under discussion, the belligerent employs a vessel to watch for contraband which is not suited for the purpose and does not enable her officers to board and search a suspected ship while she is running, the British Government cannot claim that the belligerent vessel is entitled, on that ground, to compel the ship to deviate from her course and to enter territorial waters in order that she may be overhauled under more favourable circumstances.

In the case of the *Crusader* the deviation was only trivial and the delay consequently small. So the payment of a small compensation (£10 or £20) to the owners of the steamer would fairly recompense them.

The view of the committee is as follows:

To visit and search a vessel is the right of a belligerent State, and when there is a proper reason for suspicion it is quite within the scope of the right to so act. And further, it is also within their right to bring a suspected vessel to a safe place where the visit and search can be safely executed. Now the ship under consideration was stopped where the conditions of sea rendered it quite impossible for her to be visited.

The current of Tsugarn strait is two or three knots, and when there is a southwest wind the rapidity of the current is doubled. The time the *Crusader* was stopped, the condition of the sea made it quite dangerous for both the vessels and torpedo boat to stay there. So it was quite right on the part of the Japanese torpedo boat to order the said vessel to some safe place for the sake of the safety of the vessel, if for no other reason.

(Signed) K. OKANO,

President of the Committee for the investigation of damages concerning the Prize Cases.

Case II. *The Eastry.*

Summary of the report of the committee on the 18th of September, 1906.

The brief statement of the fact. (For the concise statement of the capture, see part V. the released vessels.)

The reasons for the detention of the vessel were: (1) The vessel had carried Cardiff coal under fraudulent papers in her former voyage to Vladivostock in the latter part of November, 1904. (2) She took the route via Tsugarn Strait while there was a shorter way via Pacific Ocean. (3) She navigated close to the northern coast of Tsugarn Strait, as if she intended to hide herself from the watch of the Japanese Fleet. But she was released after no sufficient ground was found for her confiscation. After the release, the owner of the vessel on August 17th, 1904, claimed damages through the British Minister at Tokyo. The amount of the claim was £818 8s.

The View of the Committee.

(1) There is sufficient ground to believe that on her former voyage she carried contraband goods to Vladivostock via So-ya Strait but on her return voyage the character of the vessel and the nature of the coal, etc., found on board were quite different. In a prize case, the former act of a vessel cannot be taken as ground for detention. (2) Although she passed Tsugarn Strait, there were many who took the same route in winter time. So this could not be taken as the reason for detaining her. (3) As to the course being taken close by the northern coast, it is not deemed to be the reason of detention as it was quite right to take this course if the current of the strait be considered. So there was no ground to suspect the vessel and detain her. And consequently the claim of £290 12s. 4d. should be paid as damages.

(Signed) K. Okano,
President of the Committee.

According to this report, the said damages were paid.

CHAPTER III.

THE BLOCKADE OF THE LIAOTUNG PENINSULA.

Sect. I. Details of the Blockade.

On May 20, 1904, Mr. Midzuno, Japanese Consul at Chefoo, cautioned the Japanese Government, stating that now that Port Arthur is nearly isolated from other ports of the world, the remarkable leniency with which the Russians treat junks leaving Port Arthur and Dalny and the sudden increase of telegrams sent from Chefoo to St. Petersburg, all leads him to surmise that they have started a system of carrying official and private messages between Chefoo and these places by junks. It is therefore recommended that the Japanese naval authorities take vigorous measures against junks plying in these waters, especially those having Russians on board.

By that time the Imperial Navy already had contemplated blockading the Liaotung Peninsula, and the following declaration was issued, dated May 26:

I hereby declare, under command of His Imperial Japanese Majesty's Government that on the 26th day of the 5th month of the 37th year of Meiji the entire coast of that part of the Liaotung Peninsula, Province of Shing-king, China, which lies south of a straight line drawn between Pi-tsz-wo and Pu-lan-tien was placed in a state of blockade by a competent force of His Imperial Japanese Majesty's ships and is now, and will continue to be, in such a state of blockade; and that all measures authorised by the Law of Nations and the respective Treaties between the Empire of Japan and the different neutral Powers will be enforced on behalf of His Imperial Japanese Majesty's Government against all vessels that may attempt to violate the blockade.

Given on board H. I. J. M.'s ship *Mikasa*, this 26th day of the 5th month of the 37th year of Meiji.

(Signed) HEIHACHIRO TOGO,
Vice-Admiral.
Commander-in-Chief of the Combined Fleet.

The same declaration was communicated to the foreign ministers at Tokyo in the following form:

Baron Komura to Foreign Ambassadors and Ministers.

Department of Foreign Affairs, Tokyo, May 26, 1904.

MONSIEUR LE MINISTRE:

I have the honour to inform Your Excellency that a report from the Commander-in-Chief of the Combined Fleet has just been received, to the effect that, acting under command of the Imperial Government, he, on the 26th instant placed in a state of blockade the entire coast of that part of the Liaotung Peninsula, Province of Shen-King, China, which lies south of a straight line drawn between Pi-tsu-wo and Ru-lan-tien; I enclose herewith a copy of the declaration of blockade.

In January, 1905, the area of the region blockaded was enlarged, the following being the declaration thereof:

I hereby declare, under command of H. I. J. M.'s Government, that the zone of blockade announced by me on the 26th day of the 5th month of the 37th year of Meiji is now changed so that on and from the 1st day of the 1st month of the 38th year of Meiji, the coast of the Liaotung Peninsula, Province of Shen-King, China, lying west of a straight line drawn from South Entry Point to Wedge Head is placed, and will continue to be, in a state of blockade by a competent force of His Imperial Japanese Majesty's ships; and that all measures authorised by the Law of Nations and the respective Treaties between the Empire of Japan and the different neutral Powers, will be enforced on behalf of His Imperial Japanese Majesty's Government against all vessels which may attempt to violate the blockade.

Given on board H. I. J. M.'s ship *Mikasa*, this 1st day of the 1st month of the 38th year of Meiji.

ADMIRAL TOGO HEIHACHIRO,
Commander-in-Chief of H. I. J. M.'s Combined Fleet.

The former blockade extended only as far north as the line from Pitszwo to Pulantien. The new blockade extended up the whole west coast of the Peninsula, and evidently includes Newchwang.

Proclamation Issued by the Naval Department.

Until further orders, no vessel will be allowed to enter Talien Bay, with the exception of ships employed by the Imperial Government or

ships which carry permits from the Minister of War or the Minister of the Navy or the military officer in local command or the naval officer in command.

Vessels entering or leaving Talien Bay must comply with the rules fixed by the military officer in local command or the naval officer in command.

(Signed) Baron Yamamoto,
General Terauchi.

(Dated) 1st day of 1st month of 38th year of Meiji.

Several days later, the capitulation of Port Arthur was raised under the following declaration:

Notice of the Navy Department Concerning Abolition of the Blockade (Notice No. 2, issued on the 7th of the 1st month of the 38th year of Meiji).

A report has been received that the Commander-in-Chief of the Combined Fleet has declared the abolition of the blockade on the 7th day of the 1st month of the 38th year of Meiji as follows:

The whole of Liaotung Peninsula having been occupied by us, the blockade declared on the 1st day of the 1st month of the 38th year of Meiji has been abolished from this day.

So much for the general statement concerning the blockade of the Liaotung Peninsula. And now account is taken of the cases involved in the blockade and their legal discussion.

Sect. II. Medicines and Medical Stuffs Destined for Port Arthur.

During the blockade the following two wishes were cherished by Russia:

(*a*) To import into Port Arthur medicines and medical stuffs.

(*b*) To grant regular navigation privileges to hospital ships between Liaotung, Chefoo, and Shanghai.

As regards the former, it was twice demanded, (1) by the French Minister at Tokyo on Sept. 22, 1904, and (2) by a certain British newspaper correspondent.

As to the latter, Mr. Bennett Burleigh, an English correspondent for the *Daily Telegraph*, purchased a steamboat

named the *Samson*, and attempted to gain access into Port Arthur, but in vain, owing to the strict watch of the blockading fleet. Then he came to Shang-hai and published the following manifesto:

We therefore suggest in the interests of suffering humanity, so closely protected by all civilised nations, that relief should be organised without delay. An international committee should be formed to send medical supplies to Port Arthur subject to the Japanese Government approval. The method of transportation to be adopted is a matter entirely for the consideration of the Imperial Japanese Government. We may mention that the medical necessaries could be placed at the disposal of these whom the Imperial Japanese Minister may deem it wise to select for the work of conveyance. We would further represent that the need is of a nature so urgent as to have impressed the organisers that it is a matter for the world's practical sympathy in which we ask the Empire of Japan at this juncture to join. We pray that you will, by accepting this call to act on the committee, help to thus alleviate the present indescribable suffering of those unable to help or plead for themselves. The continuance of the accentuated agony does not affect the general situation. We do not desire to relieve a burden which is the sequel to peculiar circumstances, but merely to secure for those whose desperate condition requires medical attention that which under normal conditions is accessible to all, alleviation of pain.

We further point out that there are also within the besieged city many Chinese who have been accidentally injured.

We may further mention that the Imperial Russian Consul General has obtained the sanction of the Emperor of Russia to the relief offered in a cable reading: "Par order de sa Majeste Imperial vous êtes autorisé d'accepter au nom du Gouvernement Imperial la proposition qui vous a été faite et d'exprimer au comité la vive reconnaissance de la Societé de la Croix Rouge de Russie." LAMSDORFF.

He sent the following petition directly to the Headquarters, Tokyo, without passing through the Japanese Consul-General at Shanghai:

GENTLEMEN:

Please bring before His Majesty the following petition:

We humbly petition Your Imperial Majesty to give your most gracious consideration to the following memorial:

That there is a deplorable shortage of medical stores in Port Arthur is an admitted fact. This statement is founded upon reliable information of refugees and newspaper correspondents returning from the besieged city, who have themselves been eye-witnesses of that which they relate.

We know that the supply of anæsthetics is at an end. That alone may give an indication of the terrible agony of those whose wounds require surgical treatment.

It is a condition of affairs perhaps unparalleled in the history of modern warfare, calling for immediate action of an exceptional nature. We therefore pray that Your Majesty, in the interests of suffering humanity, so closely protected by your forces on land and sea, may be pleased to grant our humble request that relief should be organised without delay. An International Committee has been formed to send medical supplies to Port Arthur, subject to Your Imperial Majesty's approval. The method of transportation to be adopted is a matter entirely for the consideration of Your Imperial Majesty's Government. We may humbly mention that generous donors have already offered the medical necessaries, which could be placed at the disposal of those whom Your Imperial Majesty's Ministers may deem it wise to select for the work of conveyance. We would humbly represent to Your Imperial Majesty that the need is of a nature so urgent as to have impressed the members of the committee that it is a matter for the world's practical sympathy, in which we ask the Empire of Japan at this juncture to join.

We pray Your Imperial Majesty to accede to our petition, and thus alleviate the present indescribable sufferings of those unable to help or plead for themselves.

The continuance of the accentuated agony does not affect the general situation. We do not desire to relieve a burden which is a sequel to peculiar circumstances, but merely to secure for those whose desperate condition requires medical attention that which, under normal conditions, is accessible to all, alleviation of pain.

We would most humbly point out that there are also within the besieged city many Chinese who have been accidentally injured.

We remain Your most Gracious Majesty's most humble servants,

(Signed) BENNETT BURLEIGH,
LOUIS SPITZEL,
BARON WARD.

Kindly reply through your Consul at Shanghai.

(Signed) BENNETT BURLEIGH,
LOUIS SPITZEL,
BARON WARD.

The object of the petition was philanthropic. But the Japanese Government answered to this petition that the martial movement forbade them from expressing their consent, and that if there was real want of supplying the besieged with medicines, they would perform that service on proper occasions. It was quite right on the part of Japan from the point of view of International Law, to which this one added precedent is joined. It will be easily seen that the Japanese measure was exceedingly wise in reading through the following case, in which the actual intention of the proposal is fully brought into light:

Case I. *The Samson Case.*[1]

Alexander Pavlow *v.* Thomas C. R. Ward.

Published in the N. C. *Herald* and S. C. & C. *Gazette* on the 23rd of June, 1905.

(The abstract of the text of the trial and the decision.)

On the 21st of June, 1905, Shanghai, the case is tried before Mr. Justice de Sansmarez, and Messrs. H. C. Norris, R. S. Freemen, E. T. J. Blount, W. R. Parkin, W. J. Greeson, Jury.

Mr. R. N. McLeod, of Messrs. Stokes, Platt and Teesdale, appeared for the plaintiff, and Mr. T. Morgan Phillips, of Messrs. Drummond, White-Cooper and Phillips, for the defendant.

Mr. McLeod said that this was a claim for damages of Tls. 10,000 for wrongful conversion by the defendant of the S. S. *Samson*, the property of the plaintiff.

The pleading disclosed the statement of the claim as follows:

(1) The plaintiff is a Russian subject, resident in —— Shanghai. (2) The defendant is a British subject in Shanghai. (3) On the 30th day of January, 1905, the steamship *Samson* was registered at his Britannic Majesty's Consulate-General in Shanghai as a British vessel, the sole property of the defendant, and remained so registered until the 13th day of March, 1905. (4) During the whole of such a period the plaintiff was the beneficial or actual owner of the said steamship. (5) The defendant had not, during such period nor at any time, any beneficial interest in the said steamship. (6) The defendant knew during the whole of such period that the plaintiff was the beneficial or actual owner of the said steamship. (7) The defendant has frequently acknowledged in writing that he had no beneficial interest in

[1] The full text can be found in the N. C. *Herald* and S. C. & C. *Gazette*, June 23, 30, 1905. Here the important point only is quoted.

said steamship. (8) The defendant has in writing admitted that the plaintiff was the beneficial or actual owner of the said steamship. (9) The plaintiff has frequently demanded from the defendant a transfer by the defendant of the said steamship to the plaintiff or to his nominee, but the defendant refused and failed to effect such a transfer. (10) On, or about the 13th day of March, 1905, the defendant, without the consent or authority of the plaintiff, sold the said steamship, the property of the plaintiff, to the Shanghai Tug and Lighter Company Limited, for the sum of eighty thousand taels. (11) The defendant has never accounted to the plaintiff for this sum. (12) By reason of such matters aforesaid the plaintiff has been deprived of his beneficial ownership and has sustained damage amounting to one hundred thousand Shanghai Tls., the value of the said steamship.

The plaintiff claims the sum of one hundred thousands taels and costs.

Mr. Morgan Phillips read the answer as follows:

(1) The plaintiff is the Russian Minister to Corea, now resident in Shanghai. (2) Paragraph three of the petition is admitted but the defendant states that the *Samson* was so registered at the plaintiff's request. (3) The defendant does not admit paragraphs 4, 6, 7, and 8 of the petition. (4) In answer to paragraphs 10, 11, and 12 of the petition the defendant denies that he sold the *Samson* for the amount stated or that the plaintiff has sustained the damage alleged. The defendant sold the *Samson* for the sum of Tls. 57,000. (5) The defendant further denies that the plaintiff was the beneficial or actual owner of the steamship and states that in all the transactions connected with the said steamship the plaintiff acted as the representative of the Russian Government, which is indebted to the defendant for a sum largely exceeding the value of the said steamship. In the alternative the defendant claims to set off against the plaintiff under the following circumstances.

On or about October, 1904, a scheme was arranged to send a large quantity of medical supplies and accessories into Port Arthur, ostensibly under the auspices of an International Red Cross Society, but with the real intention of enabling the prolongation of defence. In the carrying out of this Scheme the plaintiff agreed with the defendant for the purchase of the *Samson* and another ship, the latter to be used as a hospital ship, and also the purchase of a large quantity of supplies and accessories. The above scheme received the approval of the Emperor of Russia and was accepted by Count Lamsdorff, the Russian Minister for Foreign Affairs. In accordance with the said agreement the plaintiff purchased the *Samson*, which sailed for Port Arthur on or about the 27th of October, 1904, but was detained and

refused access to Port Arthur by the Japanese Government. The defendant agreed to purchase for the sum of $200,000 Mexican currency the steamship *Elendale* to be used as a hospital ship at Port Arthur, and the said steamship was sent to Shanghai to the order of the defendant to be fitted out for that purpose. The medical stores required were purchased by the defendant. This scheme fell through by no fault of the defendant, who had done all things necessary for the carrying out of the same. The plaintiff refused to take over the *Elendale* and the defendant was forced to pay the sum of Tls. 40,000 for breach of contract in failing to complete the purchase of the said ship. The plaintiff has still left unpaid the sum of Tls. 1000 on account of the medical supplies. The plaintiff agreed to pay the defendant the sum of £20,000 to procure him a Russian decoration for his work done in connection with the scheme, and has offered to pay sums on account of the said amount.

The plaintiff is indebted to the defendant for payment *inter alia* in respect of insurance, dock charges, stores and wages for the captain and crew of the *Samson* to the amount of Tls. 11,255.84.

SET OFF.	*TLS.*
Medical accessories	1,000.00
Payment in respect of liability the *Elendale*	40,000.00
Agreed remuneration	150,885.00
Payments in respect of the *Samson*	11,255.84
	203,140.84
Sale of the *Samson*	57,000.00
Balance due to defendant Tls	146,140.84

Mr. Phillips, the counsel for the defendant, said that he intended to outline briefly the case of the defence. He referred to the plaintiff's career in the British Army, he having been an officer in the First Royal Scots Regiment, and served on the staff of Lord Roberts during the South African war. Ward was a Baron of the Austrian Empire. It was a hereditary barony and he was the fourth in succession. Counsel then gave the reasons for defendant's leaving the army and described his attempts to get to the front with the Japanese. After failing in this object defendant went to Tientsin, where he met Colonel Ogorodnikoff, Russian Military Attache in Peking. It became known that Port Arthur was badly in need of medical supplies, and defendant and the Colonel talked over the matter and arranged a scheme by which medical supplies could be got into the fortress. Defendant came into Shanghai with an introduction from

the Colonel to Mr. Pavlow, and when they had talked over the matter it was finally arranged that the scheme should proceed on the following lines. A Red Cross League, supported by as many influential people as possible, was to be formed at home. A local branch was to be formed out here, and permission was to be sought from the Japanese authorities to remove the wounded and sick from Port Arthur by means of a hospital ship. A small vessel, ostensibly for use as a press boat was to be purchased and sent to Port Arthur to find out what medical supplies were needed, and then a larger hospital ship would be sent in with the medical supplies necessary for the successful continuance of the defence. Mr. Pavlow, when the details of the scheme were finally arranged, promised the defendant the sum of £20,000 for his work in connection therewith, a not unreasonable sum when it was remembered that on the success of this scheme depended to a large extent, the safety of Port Arthur. The medical supplies were needed there more than anything else. The besieged had plenty of food and ammunition, but the urgent need of medical supplies caused fearful suffering among the wounded at Port Arthur. Counsel did not think he need discuss the importance of the prolongation of the defence of Port Arthur. If it held out it kept a large Japanese Army engaged on land, and the entire Japanese Fleet on the sea. At that time huge military operations were pending at Manchuria, and the Baltic fleet was on its way out. Ultimately Port Arthur fell earlier than it might have fallen. The result was immediate. General Nogi assisted Marshal Oyama with his army at the battle of Mukden, with the utmost effect. It was the Port Arthur army which crushed in the Russian's right, and turned the defeat into a rout. The Japanese Fleet was able to dock for necessary repairs, and then meet the Baltic fleet, and met with the result all now know. Up to that time, for eleven months the fleet had spent a wearying time at sea, night and day before Port Arthur, and it was a matter of absolute necessity for them to go into dock and refit themselves before meeting the fleet, which was, on paper, very powerful. It was therefore very important, and Mr. Pavlow recognised it, that Port Arthur should be able to continue its defence. Part of the negotiations between Mr. Pavlow and his Government have been read to the jury, and of course the whole scheme was approved by the Russian Government and authorities. The amount required for the carrying out of the scheme was fixed roughly at Tls. 400,000. It was arranged that the sum should be at the disposal of Baron Ward, either in London, Paris or Shanghai. Mr. Pavlow had himself admitted that a sum of tls. 400,000 was alluded to. Counsel then went into a detailed statement of how this amount was made up, and described

the purchase of the *Samson* and Mr. Bennett Burleigh's part in the scheme. Burleigh, Mr. Pavlow had said, was going in the interests of Russia, as a sort of a counterblast to the other papers which had not a favourable impression of the condition of the port at that time. Burleigh was going in the interests of Russia, and the jury had heard what Mr. Pavlow had said of him.

The defendant, T. R. C. Ward, when sworn, said he was a Baron of the Austrian Empire. He was formerly a Lieutenant in the Royal Scots Regiment, and served in the South African war on Lord Roberts' staff. He was invalided out of the service in April, 1902. In February, 1904, on the outbreak of war, he came out to Japan to see active service if possible. He endeavoured to get to the front, but was informed that he could not do so unless in the capacity of military attache, or war correspondent. He obtained a position as correspondent, and was invited to go on the *Manshu Maru*, which it was thought might see the fall of Port Arthur. There were about fifty gentlemen on board, military attaches and correspondents, and they had a pleasant time for some weeks, in the inland sea. Afterwards they went to Korea, calling at Chemulpo, Seoul, and Chinampo. Witness found at Chinampo that the wireless, supposed to be at work on the vessel was really non-existent, and that messages which he thought were despatched never reached their destination. Witness left the ship at Chinampo in July, and came straight to Shanghai. He then went to Tientsin to try to see active service on the Russian side. He was not fully satisfied with the treatment he had received from the Japanese. Witness went to see Colonel Ogorodnikoff, Russian military attache at Peking, and tried to get a passport to go to the Russian front. Later on he relinquished the idea of newspaper work. He was at Tientsin for two months, and an attache got him a permit for three weeks. Witness discussed military affairs with him, and found that the intelligence of the whole staff was very bad. He made certain suggestions which the colonel adopted, and he asked witness to stay there and help him. While witness was at Tientsin news was received from the Russian Consul at Chefoo that medical supplies were badly wanted at Port Arthur. The Consul tried to send in ten junks, which were captured by the Japanese. Colonel Ogorodnikoff said it was of the utmost importance that medical supplies should be got into Port Arthur. It was certainly necessary for the prolongation of the defence that these supplies be sent in. They discussed the matter together, and also discussed in rough outlines a scheme to get in supplies. About the middle of September (the 15th) several war correspondents came down from Liaoyang. The matter had been discussed about the 12th of September, but had been talked over for about a week then.

The original idea was slightly different, and they did not think of sending a press boat into Port Arthur. They were going to send a small Chefoo steamer to run the blockade and to get the necessary information. On the 16th of September several war correspondents arrived, and among them Mr. Bennett Burleigh. Witness knew Bennett Burleigh in South Africa, and he asked him what he was going to do for the rest of the time of the war. Burleigh said that he was going to try and get a despatch boat, and run around about Port Arthur. This suited witness very well indeed, and he told Burleigh that he would get him a despatch boat which would cost him absolutely nothing on one condition; that he would find out what medical supplies were wanted, and the number of sick and wounded there. Witness told him at the same time, as he wanted to find out why witness wanted to do this, that a rich Russian wanted to find out these details for charity's sake, and that an International Committee was being formed to send things into Port Arthur under the Red Cross. Burleigh was then unaware that the whole scheme was a Russian affair, and accepted the conditions. Witness tried to get a suitable boat at Chefoo and Tientsin, but without success, as there was nothing available that would suit the purpose. He told Colonel Ogorodnikoff that he would leave for Shanghai and try to find a boat there. The Colonel gave him letters to Mr. Pavlow at Shanghai. Witness then came to Shanghai and saw Mr. Pavlow. He arrived on the 14th of October and saw Mr. Pavlow that day. They did not discuss the matter then, but talked about what had happened in Tientsin and Peking. On the 15th he talked over the whole matter with Mr. Pavlow, who told him he had received a telegram for the Colonel about the whole transaction. Witness had handed in the Colonel's introduction on the 14th. He received a letter from Mr. Pavlow on the 14th, the day he arrived, and it was arranged that they should meet. Mr. Pavlow asked Bennett Burleigh and witness to tiffin next day. Burleigh had come to Shanghai the same day, as witness had telegraphed for him. Witness and Burleigh went to lunch, and discussed the matter afterwards. Burleigh only stayed for a short time. He listened only to that part of the scheme which concerned him. Witness had not told Burleigh exactly how things stood. He and Mr. Pavlow discussed the matter for about three hours, and the whole scheme was laid before the plaintiff. Mr. Pavlow then wired to St. Petersburg to get confirmation of the whole arrangements. The scheme was formed with the object of getting hospital supplies into Port Arthur. An International Red Cross Society was to be formed, under whose auspices supplies were to be sent in.

Burleigh was to be on the despatch boat trying to get informa-

tion out of Port Arthur as to the medical supplies, and especially the number of people wounded. From this information a list would be made, and it would be seen what sort of a ship was required.

Sect. III. On the Establishment of a Hospital Liner.

Under the date of May 21, 1904, the French Minister at Tokyo sent a letter to our Foreign Minister, asking Japan if she had any objection to the establishment of a hospital liner between Port Arthur, Chefoo, and Shanghai to transport the sick and wounded. He proposed the *Mongolia*, the Russian hospital ship, to be one of the vessels.

The answers sent in from military and naval authorities concerning the proposal were as follows:

Baron Yamamoto, the Naval Minister, to Baron Komura.

May 30, 1904.

Although concerning the Russian floating hospital referred to in despatch, the answer has already been made, since the Commander-in-Chief of the Combined Fleet has declared a blockade along the coast of Shih-King-Shih of China, and the southern part of Liaotung Peninsula, the said hospital ship cannot hereafter be exempted from the obligations accompanying the blockade. I ask you to transmit information to this effect to the French Minister.

Mr. Terauchi, Minister of the Military Department, to Baron Komura.

June 1, 1904.

I acknowledge the receipt of your despatch, dated the 25th inst., along with the text of the French Minister's proposal concerning the Russian floating hospital. Assuming that the Russian wounded and sick are to be found at Chefoo, their transportation on board a floating hospital to Shanghai seems to need no such special notification as that addressed to our Government, considering the fact that the stipulations of the conference already contain express sanction thereto; so that I cannot help suspecting that the Russian anxiety to install a hospital liner between Chefoo and Shanghai is a contrivance of the Governor-General of the Far East to thereby add to the capacity of transportation enjoyed by the Siberian Railway, which, if true, must be a breach of the treaty, article 4, concerning the application to maritime warfare of the principles of the Geneva Conference of August 22, 1864, according to which stipulation, a hospital ship should not be

used for military purposes, nor should interfere in any way with the interests of a belligerent. Therefore, we cannot comply with the Russian proposal, which is apparently intended to contribute to the communication with the field, by means of the *Mongolia*, over the sea where Russians have absolutely no control. Moreover, considering the fact that there is no Russian hospital in Chefoo, the hospital ship in question must have been implicitly intended for the sending back of Russian wounded and sick over sea from the Manchuria field, or from the besieged Port Arthur and Kin-chau Peninsula; thus impeding our advantages and promoting theirs in Manchuria. On the above grounds, a notification should be sent to the Russian Government to the effect that our Imperial Government cannot recognise in the *Mongolia* those special privileges due to a hospital ship according to the stipulations of the Conference.

For these reasons, the Japanese Government refused to consent to the proposal. It is quite correct to reject such a proposal on the part of Japan. Note that in this one principle is added by actual case to the rules of the blockade.

Sect. IV. Blockade Runners.

That the blockade was not prompted from the commercial point must be self-evident when the non-commercial but purely naval nature of the port is considered. During the war, Dalny, another port within the same zone, was not visited by any neutral ships, and along the whole stretch of the blockade no trading port was to be found. Thus, the motive underlying the blockade was not to intercept the communication of any neutral steamship, but to prevent Chinese junks from doing anything contributing to the enemy's efficiency, such as, for instance, the sending of military despatches, etc. The blockade met, however, with quite a number of blockade runners; the methods they resorted to being set forth in the following report:

The Russian communication between Chefoo and Port Arthur is still maintained by means of junks. The common method they resort to to evade our inspection, is to suspend empty petroleum cans containing necessary documents, covered with pebbles, down from the bottom of the junks.

In such a way communications were conveyed to Port Arthur. Here is an article well showing what these blockade runners would do.

The blockade of Port Arthur is gradually being drawn tighter, and a supreme effort is being made to effectively shut off communication, particularly between the city and the Chinese coast. Junks are being overhauled right and left, and the Chinaman who succeeds in getting his vessel within hailing distance of the Liaotung Peninsula is a wonder. The increasing severity of the blockade is in line with admissions of the Japanese just after the failure of the last big attack on Port Arthur, when it was practically announced that future efforts would be directed towards drawing an impenetrable cordon about the citadel on the seaside.

The elusive junk with its cunning Celestial sailor, and the way it successfully came and went, has puzzled Admiral Togo and his fleet, but the Admiral is now getting a line on the naughty skippers, and his torpedo boats scout the seas day and night, ready to pounce upon unwary victims.

Three hundred junks or more have been taken in tow during the last few days, according to the best information, most of them being escorted to Dalny. The protestations of their navigators are of no avail, be they to the effect that they were bound for Dalny anyhow, or that they were merely out for a sail on pleasure bent.

The base of operations in rounding up this indiscriminate collection of shipping is the Miautau Islands. Here the fleet has a sort of headquarters. There is a repair station located on one of the islands, where minor breakages are fixed up, and where the torpedo boats and smaller craft find shelter.

Merchant steamers on their regular runs from Chefoo north do not escape the vigilance of the ocean sentinels. One ship arriving from Niuchwang the latter part of last week was held up no less than three times on her way down. The much talked-of blockade is becoming such in fact, and news from Port Arthur is sifting through slowly.—*Chefoo Daily News*, on 5 Oct., 1904.

Among many blockade runners seized upon, a few of the most noteworthy cases are epitomised below.

On August 4, five Russians were caught on their way from Pigeon Bay to Chefoo, one of whom, a Russian officer, had about him 180 letters, besides one addressed to Kuropatkin, and also two Greeks, who gave every appearance of being spies. The case brought forth no international trouble.

On August 16, seven Russian officers, breaking the blockade, betook themselves to Chefoo, on which occasion the Japanese Consul at Chefoo reminded the Chinese Government of proper precautions.

Besides these, several other ships broke the blockade, but these will be treated in Part V.

Sect. V. Legal Problems Involved in the Blockade of Liao-tung.

The following is Professor Lawrence's critique on the blockade of Liao-tung:[1]

> It has become a general practice to allow a fixed time from the commencement of the blockade, for neutral ships already in the harbour to leave it unmolested, and sometimes for those outside to enter. This has always been done in recent wars, when a blockade has been instituted soon after the commencement of hostilities, or in such circumstances that neutral shipmasters can have little or no warning. Whether it would be expected in an unusual case, like the blockade of Port Arthur and the Liao-tung Peninsula proclaimed by Admiral Togo on May 26, may be considered doubtful. Ever since the beginning of February the Japanese Fleet has ridden triumphant in these waters, and made attack after attack on the great Russian naval base. There can hardly have been a neutral seaman in the world who did not know for weeks before the proclamation of the blockade that a voyage to Port Arthur would be a most risky experiment. But putting aside anomalous cases, days of grace are expected by neutrals. Generally the indulgence is confined to ships coming out in ballast, or with cargo laden before the commencement of the blockade.

This is, however, somewhat out of the way, for the absence of any mention about days of grace in the Japanese declaration by no means shows that such a measure was not taken on Japan's part.

In fact, Japan's intention at that time to afford sufficient days of grace to foreign ships, if any were found thereabouts, could have accomplished practically nothing; for there were

[1] Lawrence, *War and Neutrality*, Chap. III., p. 60.

no such ships, except those Chinese junks serving the enemy, and rightly Japan's prizes.

Some would perhaps argue that no blockade is necessary when in a belligerent port, such as Port Arthur was, and that ships bringing provisions to the enemy may be safely seized upon as carrying contraband. They are referred to what is known as the junk, and its peculiar way of assisting the enemy. As long as the junk was a sort of neutral ship, the blockade must recommend itself as a right measure providing against it.

CHAPTER IV.

CONCERNING FLOATING HOSPITALS.

Sect. I. Negotiations about Japanese Floating Hospitals.

Japan installed the following ships as her floating hospitals:

Name of the Vessel.	Tonnage.	Number of beds.
Yokohama Maru	2,372.55	319
Rossetta Maru	3,875.65	431
Rohira Maru	3,609.43	442
Miyoshino Maru	3,706.79	536
Doyo Maru	2,166.69	232
Dairen Maru	2,926.73	222
Choysang Maru	1,984.65	206
Konoura Maru	2,185.09	230
Koun Maru	2,876.35	304
Kwabafuto Maru	2,895.30	238
Toyei Maru	2,807.61	314
Kohina Maru	3,192.69	336
Jingu Maru	3,000.20	252
Ugo-Maru	2,300.11	210
Kissho Maru	2,478.82	227
Aumi Maru	2,501.29	288
Daiichi-Kolohira Maru	3,723.45	442
Yamashiro Maru	2,580.45	298
Hakuai Maru	2,636.00	226
Kosai Maru	2,635.00	218

Negotiations similar to the following, which refer to the *Rossetta Maru*, were carried out in the case of each of the above-named floating hospitals:

On the 10th of Feb., 1904, Baron Komura sent a despatch to Mr. Takahira saying that the Imperial Government equipped the *Rossetta Maru* as a military hospital ship to be used exclusively for the service of the wounded, sick, and shipwrecked, and that the United States Government would communicate this fact to the Russian Government in accordance with Arts.

I. and II. of the Convention for Application to Maritime War of the Principles of the Geneva Convention.

This instruction was carried out by Mr. Takahira. On the 23rd June, 1904, Mr. Inouye, the Japanese Minister at Berlin, sent a report enclosing the following note:

(Enclosure.)

American Embassy, St. Petersburg, June 20, 1904.

YOUR EXCELLENCY:

I have the honour to inform Your Excellency that at the instance of the Japanese Minister at Washington, transmitted through the Department of State, I have informed the Russian Government of the equipment of the steamer *Rossetta Maru* by the Japanese Government as a floating hospital of the Red Cross, in conformity with the stipulations of The Hague Convention, and I have to-day received a note from the Imperial Ministry for Foreign Affairs stating that the Russian Government had transmitted the above information to the Imperial Lieutenant in the Far East, who had taken the necessary steps for the official recognition of the *Rossetta Maru* in the above-mentioned capacity.

I am, sir, with high regard,

Your obedient servant,

(Signed) ROBERT S. MCCORMICK.

His Excellency Mr. Inouye,

Imperial Japanese Minister at Berlin, etc.

Sect. II. Opinions of the Masters and Chief Physicians of Hospital Vessels, on Questions Relating to The Hague Convention for the Application of the Geneva Convention to Maritime Warfare.

Having been commissioned by the Tokyo Imperial University early in August, 1904, to make inspection of matters bearing upon International Law, the author travelled through Nagoya, Kyoto, Osaka, Himeji, Matsuyama, Kure, Ujina, Hiroshima, Sasebo, and Nagasaki. At Ujina, he met with many physicians of the floating hospitals and consulted with them regarding the following questions:

1. Reprehensibility of the omission of Art. X. of The Hague Convention for Application to Maritime War of the Principles of the Geneva Convention.

2. How to make a hospital ship recognisable by night.

3. Is there any need of colouring a neutral hospital ship otherwise than green and red?

4. For a hospital ship or a ship not a hospital, is it justifiable to rescue the sick and wounded by venturing into the place of combat? Or is such conduct to be allowed only after the combat?

5. The disposal of the wounded and sick received in a neutral ship.

Below are some of the statements obtained in response to the above questions, together with personal opinions.

I. *Reprehensibility of the Omission of Article X.*

"The wrecked, wounded, or sick, landed at a neutral port with the permission of local authorities of the neutral government, should be detained there to prevent them from taking up arms again, unless the said neutral and the belligerents have otherwise contracted; expenditures for drugs and detention being chargeable to the nation to which the said wrecked or wounded belong." Such is the 10th Article cancelled according to the English objection. This omission is rather illogical, considering that Arts. LVII. and LVIII. of the regulations of land-combat passed at The Hague in the same year, still exist with just the same purport as contained in the omitted article; though we are well aware of the Habeas Corpus Act which forbids English authorities any control over military refugees. It is a sheer inconsistency to strike out one and to spare the other of the two similarly intended laws.

Nothing is more desirable than English concession on this point, so as to remove thereby the queer discordance between land and sea regulations.

All the commanders of our hospital ships agree with the author in their opinions.

This matter will be discussed later under the title of "Refugees in Neutral Territories."

II. *How to Make a Hospital Ship Recognisable by Night.*

The point in consideration remains still practically untouched in all regulations of whatever sort. During the late

war the question was touched on, though the matter ended without any result. The details are as follows:

The proposal of the Russian Government to display lights on Hospital ships at night.

The following was the letter from the French Chargé d'Affaires concerning this:

Légation de la République Française au Japon,
Tokyo, le 22 Août, 1904.

MONSIEUR LE BARON:

Je viens d'être avisé par mon gouvernement que, suivant une décision du Ministère de la Marine Russe, les bâtiments hospitaliers porteront dans la nuit sur la corue d'artimon ou sur le bâtou de pavillon arrière trois feux uerticaux, ceux d'en haut et d'en bas étant blances et celui du milieu etant rouge.

Conformement aux instructions qui me son addressées, je serai obligé à Votre Excellence de vouloir bien porter cette information à la connaissance des Autorités competentes.

Veuillez agréer, Monsieur le Baron, les assurances de ma très haute consideration,

(Signé)

The following answer was made by the Naval Minister to the despatch of the Foreign Minister concerning the point in question:

Received Aug. 30, 1904.

I beg to inform you of my full appreciation of the purport of your despatch regarding the lamps of the Russian hospital ship. To the conferring of special privileges, due to a hospital ship, on the hoisting of certain distinguishable lamps, our Imperial Navy cannot agree, being apprehensive of various possible dangers which might arise as the result of such a contrivance being availed of by an unprincipled enemy. You are therefore requested to notify the French Minister that our Imperial Navy shall be perfectly unrestricted in its movements by his recent notifications.

On being notified in the sense above expressed, the French Minister again sent in the following letter:

Légation de la République Française au Japon,
Tokyo, le 2 Decembre, 1904.

MONSIEUR LE BARON:

Votre Excellence a bien voulu me faire connaitre par sa lettre du 3 Septembre dernier la réponse des autorités maritimes à la noti-

fication des dispositions adoptés par la Marine Russe pour permettre de reconnaitre les bâtiments hospitaliers pendant la navigation du nuit.

Je viens d'être avisé que, malgré l'intention manifestée par le Gouvernement Japonais de ne pas considérer les fanaux allumés la nuit sur les navires hôspitaux comme suffisant à leur conférer lès privileges reconnus, le Gouvernement Russe maintenait sa dècision de faire employer les signaux distinctifs specifies dans ma communication du 22 Août.

D'ordre de mon Gouvernement, j'ai l'honneur de notifier cette résolution à Votre Excellence.

Veuillez agréer, Monsieur le Baron, les assurances de ma très haute consideration,

(Signé) J. HARMAND.

Below are opinions from men of experience on the point in consideration:

1. The colour-lamps should be resorted to, because the glass-lamp with a cross on it, decidedly the best one for the purpose, would be hardly distinguishable at a distance; furthermore, the green lamp should be used if a hospital ship of the army, and a red lamp, if a Red Cross hospital; and two of such lamps should be hoisted together to the top of the mast, the best luminary agency doubtless being electricity. At any rate light is the only recourse in such cases, provided the light used does not conflict with the International Regulations for the Prevention of Collision of Vessels. (K. Toda, Chief Physician of the *Choysan Maru.*)

2. While sailing, three lamps should be hoisted, at intervals of 6 feet lengthwise, on the foremast or in front of it. If the vessels are those of military or naval hospitals, the three lamps should be two white with one green between them, and if those of the Red Cross hospital, the middle lamp should be red—the construction of the lamps and their location being the same as in the case of steamships.

While at anchor, lights as described above, and showing as far at least as one nautical mile in every direction, should be placed at the most exposed places, and if there is any need of showing their being hospitals, the searchlight used for the nautical semaphore shall indicate the name of the ship on the blank and the Red Cross on the funnel. (Y. Tateyama, Chief Physician of the *Rossetta.*)

3. While sailing, lights visible at 5 miles' distance, the lights of hospital ships belonging to either of the belligerents being two white with one green between them, and those of neutral hospital ships two white with one red between them, should be hoisted to the top of

the mast. While at anchor, lights visible at a distance of not less than one mile will suffice. As a means of their being recognisable as hospital ships, the signal lamp or luminary signal may be resorted to. (S. Miyazaki, Chief Physician of the *Doyo Maru.*)

4. The lamp to be lighted on the foremast for the night should be red, as in the field hospital. As for a special device for making the fact of their being hospital ships recognisable, I can conceive of no need whatever, because there is no doubt but that the hospitals of any civilised power will always bear the enemy's inspection, owing to their being absolutely free from any unfairness; and the practice of using a special device will only have the effect of making other indispensable signals mistakable, and in uncivilised nationalities where the standard of morals is low, will lead to serious inconveniences in more ways than one. The signal lamp, however, must be said to be the only means of indicating hospitals. (T. Yosimoto, Chief Physician of the *Kohina Maru.*)

5. As to lights indicating hospital ships by night, such colours as have been mentioned in the navy or in the regulations to prevent marine collision should not be used. (S. Nagano, Chief Physician of the *Shingu Maru.*)

6. Perhaps the best device is to hang at a suitable height on the stern mast green and white signal lamps joined lengthwise with an interval of 6 feet, the size of the said lamps being the same as those anchorage lamps on the fore-mast; that is, of a magnitude reaching a distance of not less than two nautical miles. Green and white put together not only conflict with no current nautical signal, but have a peculiar adaptability because of their far-reaching light. (Y. Okumura, Chief Physician of the *Toyei Maru.*)

7. Electricity is recommendable. A hospital ship should be distinguished by a bright green lamp hoisted at the tip of the fore-mast, and should be constant in brightness and visible at a distance of three nautical miles on a clear night. If there is no fore-mast, it should be placed at the most visible point in the prow, and not less than fifteen feet above the navigation-lamp (required by the Regulations for the Prevention of Marine Collision, II., 1) and not less than five feet above the subsidiary lamp (II., 5). (S. Nagao, Chief Physician of the *Ko-un Maru.*)

8. A series of five or more red lamps, lengthwise at intervals of about two metres, should be placed behind the fore-mast. (R. Sake-Nobu, Chief Physician of the *Kotohira Maru.*)

9. A hospital ship should be distinguished at night by a colour lamp, whose colour and luminant magnitude have been previously settled upon. It should be recognisable at a distance of from three

to five nautical miles. (F. Santomi, Chief Physician of the *Haku-ai Maru.*)

10. Electricity should be used. If each hemisphere of an easily recognisable lamp is painted in the same way as the flanks of the vessel, a hospital ship may be readily distinguished. Or by a certain order of colour lamps, for instance, the green above red, or vice versa; stationed at a certain conspicuous position, for instance, up on the mast, the same may be done. (T. Arakawa, Chief Physician of the *Yokohama Maru.*)

11. By night, a hospital ship should be distinguished by means of three lamps, green, red, and white, after the colouring of the flanks of the ship, always lighted at a certain distance below the navigation lamp on the fore-mast. (S. Otsuki, Chief Physician of the *Kitisho Maru.*)

12. In the face of the enemy, *a light on a hospital ship betrays the anchorage of the fleet.* To recall an instance, while our ship was off Genzan, Korea, even the slightest sign of light was prohibited by the naval authorities. Though almost intolerable for the sick and wounded, especially in the hot season, to have windows and apertures shut up, yet under such circumstances the directions of the authorities should be observed. (T. Watanabe, Chief Physician of the *Kabafuto Maru.*)

13. By night, a hospital ship should be distinguished by a series of lamps, in order white, blue and another white, stationed lengthwise on the fore-mast. (R. Isyi, Chief Physician of the *Omi Maru.*)

14. A hospital ship should be distinguished by attaching a Red Cross electric lamp to the ordinary lamp. (U. Komatsu, Chief Physician of the *Tailen Maru.*)

15. *No special light will be necessary,* for wherever a warship happens to meet another vessel it throws over it a blaze of searchlight. (R. Takda, Chief Physician of the *Kosai Maru.*)

16. Two electric lamps, a red one below a green, if possible revolving, should be placed on the fore-mast. To distinguish a hospital ship, an international system of electric signals should be settled upon. (T. Satomi, Chief Physician of the *Miyoshins Maru.*)

Author's opinion agrees with No. 12 and No. 15.

III. *Is There Any Need of Colouring a Neutral Hospital Ship Otherwise Than Green and Red?*

As it is purely of a practical nature, though an important part of a treaty, only the opinions of the chief physicians of the hospital ships will be quoted without any discussion.

1. No such device will be necessary, its special flag being of sufficient effect. (The *Kohina Maru.*)

2. Of the same opinion as the above. (The *Ugo Maru.*)

3. A special colour should be resorted to because a flag will be of no use by night, and even in day-time it is hardly recognisable at a distance. (The *Toyei Maru.*)

4. A special colour is recommendable, and by way of suggestion, we should advise a white horizontal band between the green and red. (The *Ko-un Maru.*)

IV. *For a Hospital Ship or Ship not Hospital, is it Justifiable to Rescue the Sick and Wounded by Venturing into the Place of Combat During the Battle? or is Such Conduct to be Allowed Only After the Battle?*

Even though we are aware of the fitness of relieving the discomfited either in the course of hostilities or after, according to the express provisions contained in Art. IV. of the treaty, which says that "the said ships may perform their rescue service either in the course of hostilities or after, at the risk of their own safety being endangered," still uncertainty exists as to the sphere in which they may lawfully move about, or in other words, whether they are allowed in the line of hostilities to rescue the wounded and sick or those who are drowning. For instance, suppose an admiral of the enemy's squadron is drowning, then is it lawful for a neutral hospital ship or a neutral ship not hospital to try to rescue him, venturing into the line of hostilities, say within the range of fire, or should an action be condemned as prejudicial to the opposite ship for taking away an important prisoner thereby?—a practical problem met with even in the course of the late war.

Some insist on limiting such a rescue to the *post bellum*, while others are prone to sanction it, on the ground that the admiral thus rescued should naturally be placed under the power of the belligerents together with that neutral ship in which the rescued admiral was, as the victor's warship can control that neutral ship.

1. With a view to the best service, a hospital ship should attempt the rescue of the sick and wounded after a combat, avoiding

all possible risks, unless the case requires otherwise, as, for instance, when a warship is at a point of sinking and has ceased to be of any moment to the combat going on. (The *Choysan.*)

2. The rescue should be after the combat. (The *Rosetta.*)

3. Not infrequently it is done during a combat. (The *Doyo Maru.*)

4. As far as it affords no disturbance to the combat going on and circumstances are duly taken into consideration, rescue during a combat should be justified. In such cases, however, a special accommodation will be required. (The *Kohina Maru.*)

5. Owing to lack of any personal experience, I am indisposed to offer any opinion on the point. (The *Ugo Maru.*)

6. Though not yet confirmed with any personal experience, I should say it may be possible to rescue during combat, as far as the circumstances allow any access of a hospital ship to the theatre of combat, and provided the ship for the purpose is of a small size, say, some 200 tons, with a capacity for about 200 persons to be rescued, of a tolerable speed, and with convenient accommodations for the purpose. (The *Kabafuto Maru.*)

7. Rescue during combat may be justified as far as it does not interfere in any way with the movements of the combat going on. (The *Toyei Maru.*)

8. As a hospital ship would be exposed to every injury from shots, and might be taken as an impediment to the belligerents, the rescue service should be put off till the combat is ended. (The *Ko-un Maru.*)

9. The rescue should be done after the combat, because if not, the belligerents would be thereby disturbed, and the rescue would be ineffectual. (The *Kitisho Maru.*)

10. Rescue would be practically impossible during a combat, owing to all sorts of danger possible. (The *Miyoshi Maru.*)

V. *The Disposal of the Wounded and Sick Received in a Neutral Ship.*

Regulations must be said to be really incompetent when matters turn on the disposal of the wounded and sick of either of the belligerents received by a neutral ship; and it is well known that Mr. Mahan, of the United States of America, and M. Nornean, of France, widely differed in their opinions while The Hague Convention was being established, on whether the wounded and sick should be restored to their own nationality, should be sent to a neutral port, or be left at the victors' mercy.

At any rate, the belligerents have controlling authority over a neutral ship, but as a consequence of the striking out of Art. X., the wounded and sick are to be either detained till circumstances require otherwise or unconditionally restored to their respective nationalities.

This point deserves deliberate consideration along with Art. X. of the Convention.

The opinions of some of the Japanese floating hospitals were as follows:

1. The wounded and sick of either of the belligerents rescued by a neutral ship should be under a certain oath, if restored to their own nationality. (The *Choysan.*)

2. The wounded and sick, whether restored to their normal state or not, should be detained by a neutral power, as long as the hostilities last. (The *Toyei Maru.*)

At The Second Hague Conference these questions were discussed and a convention was passed.

Dr. J. B. Scott remarks as follows:[1]

"The Tenth Convention adapted to maritime warfare the principles of the Geneva convention of 1906. It is not necessary to describe this admirable document in detail. We are familiar with the Red Cross and its work, and there exists absolute unanimity of opinion that the sick and wounded upon the battle-field or upon the high seas should be cared for, irrespective of nationality. Humanity demands it, and this demand has been carefully complied with. A word of history may, however, be permitted. The first Geneva convention, dealing with land warfare, was drawn up in 1864. The additional articles of 1868, extending the principles of land warfare to naval warfare, failed of adoption. In 1899 the additional articles were made the basis of a convention dealing with this question adopted at the First Hague Convention. Warfare, however, had changed since 1864, and it was felt that the provisions of the Geneva Convention of 1864 should keep pace with the changed conditions, so in 1906 the Geneva Con-

[1] *The American Journal of International Law*, vol. ii., No. 1, January, 1908, pp. 20–21.

vention of 1864 was revised and the present conference adapted the provisions of this revised convention of 1906 to naval warfare. It is not necessary to enlarge upon the importance of this convention. We understand it and are proud of the progress it marks, in succouring the sick and the wounded, and mitigating in their extreme rigour the evils necessarily incident to war."

In the author's opinion there remain many points which ought to be regulated; still it is true that there is good reason to be proud of the progress, comparing the former conventions.[1]

[1] See also, Westlake's *International Law*, Part II., pp. 275–279.

CHAPTER V.

WAR CORRESPONDENTS OF FOREIGN NEWSPAPERS AND CORRESPONDENTS' SHIPS.

The war brought to Japan many correspondents of foreign newspapers, and made it necessary that steps be taken for their proper superintendency. Under the circumstances many of them deemed the Japanese superintendents too strict, and were offended on account of it; but it was a military necessity on the part of Japan. Suppose that the statements as to the strong power of Russia were believed by the world. Charles XII. with his marvellous energy failed to win her. Even Napoleon the first did not succeed in conquering her. Japan, for the necessity of self-existence, when confronted with such a formidable enemy was justified in taking extreme care in keeping her military secrets. Moreover, it must be noticed that there were some who had reason to be suspected of acting for Russia, and this not without good evidence, and the fact that there were such persons had a natural effect to give inconvenience to the other correspondents. It was a fact that Japan paid great attention to treating well the newspaper correspondents. For that purpose, the graduates of the Tokyo University as well as the Paris University, etc., were attached to each army for entertaining these far-coming guests. Dr. Y. Tanaka, one of those who were in this service, told the author his experience, that at first there were some misunderstandings between the correspondents and military officers who were not well acquainted with foreign languages. But when they understood each other they had no more ill feeling and became very intimate. Only those who left Japan or Manchuria before they came to understand each other returned with the bitter feeling still with them, which is a very regrettable fact.

And so far as the author of this work knows, there was no special ill treatment of the correspondents. Here is an article of a foreign paper as quoted:

War Correspondent's Impressions.[1]

Mr. George Lynch, the well-known littérateur and war correspondent, whose experience of military matters in the two hemispheres particularly fits him to express an opinion on the present state of affairs in the Far East, arrived at Queenstown yesterday by the *Baltic* on his return from the seat of war.

As regards the press censorship Mr. Lynch did not complain of it. "It was of enormous importance to the Japanese that information as to their position and resources should not be given to the enemy. For instance, at Pitsewo where the Japanese landed, the water was so shallow that a boat could not land, and the troops had to wade 4000 metres. If that spot had been indicated, Russian troops could have been sent there, and 500 of them could have kept 5000 men at bay. No reasonable correspondent could have objected to the Japanese censorship, and it was much fairer than the Russian."

The problem of the treatment of the newspaper correspondents is well discussed in International Law Situations, published by the United States Naval College.[2] The author takes the liberty to quote the large part of the solution to prove that the Japanese treatment of the correspondents was very reasonable, judging from the American view.

Notes on Situation VII.

(*a*) What treatment should the correspondents described in this situation receive?

Russian Declaration, 1904.—During the Russo-Japanese War in 1904, in April, there was issued by Admiral Alexieff a circular in regard to the use of new means of communication by newspaper correspondents. This was particularly aimed at certain neutral press boats which were using wireless telegraphy in transmitting news of the war.

The circular handed by the Russian diplomatic agents to the foreign offices of various states was reported as follows:

"I am instructed by my Government, in order that there may be

[1] Cork *Examiner*, November 11, 1905.

[2] *International Law Situations*, 1904, Situation VII., pp. 106–116.

no misunderstanding, to inform your excellency that the Lieutenant of His Imperial Majesty in the Far East has just made the following declaration: In case neutral vessels, having on board correspondents who may communicate news to the enemy by means of improved apparatus not yet provided for by existing conventions should be arrested off Kwangtung, or within the zone of operations of the Russian fleet, such correspondents shall be regarded as spies, and the vessels provided with such apparatus shall be seized as lawful prizes."

It should be observed that the Russian Government merely informs other governments that Admiral Alexieff has issued this Declaration. The Russian Government does not assert that it proposes permanently to support the position taken by its lieutenant.

The French text of the Declaration was as follows:

Dans le cas ou des vapeurs neutres, ayant à bord des correspondants qui communiqueraient à l'ennemi des nouvelles de guerre au moyen d'appareils perfectionnés n'étant pas encore prévus par les conventions existantes—seraient arrêtés auprès de la côte du Kwantoung où dans la zone des opérations de la flotte russe—les correspondants seront envisagés comme espions et les vapeurs, munis d'appareils de télégraphie sans fil-saisis en qualité de prise de guerre.

Treatment of Vessels Using Wireless Telegraph.—Considering the provisions of this circular in the reverse order of their statement, the first matter is the treatment of the vessels. The implication is that the equipment with wireless telegraphic outfit by a neutral vessel "within the zone of operations," is sufficient ground for the seizure of the vessel as lawful prize. If this means that the ordinary rules of prize courts hold for such a vessel, it is difficult to understand how an adjudication can be made. If the circular means that such vessels, when actually engaged in communicating information of a military character to the enemy, are guilty of unneutral service and are liable to the penalties consequent upon such service, the provision is clear, for such would be the offence, and the regular penalty would be confiscation of vessel and equipment.

The attempt to bring under the rules of contraband and violation of blockade many forms of action in time of war which have only a remote relation to either has led to confusion, which shows the need of further elucidation of the principles of unneutral service which involves actual participation by service in behalf of the enemy.

Spies.—The treatment of the correspondents using wireless telegraphy as spies raises further questions.

The treatment of a captured spy is usually summary and extreme, and while Art. XXX. of The Hague Convention respecting the Laws and Customs of War on Land prescribes that "a spy taken in the act cannot be punished without previous trial," yet the penalty is

usually extreme. If, then, the proclamation of the Russian admiral is admitted as in accord with practice, the position of a newspaper correspondent would be exceedingly dangerous when news is communicated to the enemy, since he might become liable to treatment as a spy.

Both Russia and Japan are, however, parties to the above-mentioned convention, which defines the term "Spy," in Art. XXIX., as follows:

> An individual can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain, information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.
>
> Thus, soldiers not in disguise, who have penetrated into the zone of operations of a hostile army to obtain information, are not considered as spies. Similarly the following are not considered as spies: Soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army, or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches and generally to maintain communication between the various parts of an army or a territory.

This rule is in accord with general practice, both for land and naval warfare. There is no basis upon which an officer in the military service can set up a new definition. The fact that a news correspondent uses in transmitting communications "improved apparatus not yet provided for by existing conventions" does not constitute him a spy. It is not the means of communication but the nature of the act which determines the status of a spy. The nature of the act is clearly set forth in The Hague Convention above quoted, and any person, whether newspaper correspondent or other, guilty of such an act, whatever the means used, is a spy without further proclamation or discussion.

Conclusion as to Russian Declaration.—The conclusion would be, therefore, that a vessel is not liable to seizure as prize merely from the fact of having on board "improved apparatus" for communicating news, and that correspondents using such "improved apparatus" are not liable from the simple fact of its use to treatment as spies.

On the other hand, newspaper correspondents who act in such a manner as to bring themselves under the definition of spies are liable to treatment as such, without special notification, in the same manner as any other person. The vessel concerned in transmitting such information, together with its equipment for such purpose, is undoubtedly liable to the penalty of unneutral service, which is confiscation.

It is not possible to defend the position assumed in the Russian circular in its present extreme form. As Kebedgy says:

> L'emploi de la télégraphie sans fil par les correspondants des journaux à la guerre a posé une question qui mérite d'être étudiée de près. Mais nous ne pensons pas qu'on pourra jamais approuver la décision de traiter ces correspondants comme des espions. (*Revue de Droit International*, VI., p. 451.)

The manifest intent of the circular to control the action of press agents and press boats within the zone of hostile operations is, however, proper in view of the danger to the belligerent which may follow unrestricted communications.

Control of Newspaper Correspondents.—Various regulations have from time to time been issued which affect newspaper correspondents.

The Hague Convention respecting the Laws and Customs on Land provides:

ARTICLE XIII. Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

Instructions for the Government of Armies of the United States in the Field provide:

ARTICLE L. Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war and be detained as such.

Art. XXXIV. of the Brussels Rules of Military Warfare, 1874, provides that:

Persons in the vicinity of armies, but who do not directly form part of them, such as correspondents, newspaper reporters, vivandiers, contractors, etc., may also be made prisoners of war.

These persons should, however, be furnished with a permit, issued by a competent authority, as well as with a certificate of identity.

And Art. XXIII. defines prisoners of war as "lawful and disarmed enemies."

The Oxford Manual of the Laws of War on Land of 1880 gave to such persons a more lenient treatment, as is shown in Art. XXII.:

Persons who follow an army without forming a part of it, such as correspondents of newspapers, sutlers, contractors, etc., on falling into the power of the enemy, can only be detained for so long a time as may be required by military necessity.

The rules of The Hague Convention of 1899 do not define prisoners of war, but do provide for their treatment, and provide that newspaper correspondents and reporters shall have like treatment when captured.

Certification of Newspaper Correspondents.—The implication of the last clause of Art. XIII., *viz.*, "provided they (newspaper correspondents, etc.) can produce a certificate from the military authorities of the army they were accompanying," is that in the future such correspondents are to be regularly certified by the commander of the forces with which they are for the time being.

According to The Hague Convention, the right to grant certificates to correspondents is in the hands of the commander. The commander, in the absence of orders to the contrary, would be authorised to prescribe the regulations under which certificates would be granted and by implication would be able to exclude from the field of his authority those not properly certified.

Further, there is implied in the right to grant the certificate the right to withhold, which would be a means by which the character of the correspondents could be in a measure controlled.

There would also be implied the right to make such rules for the government of correspondents as might at the time seem good.

The rule of The Hague Convention would also seem to indicate that persons not having a proper certificate would not necessarily be entitled to the treatment of prisoners of war. If this be the case, the military commander would properly insist that correspondents should, if with the forces, be provided with proper certificates.

A plan making a certificate a compulsory prerequisite for accompanying military forces would accord with the spirit of The Hague Convention, and would put the control of correspondents in the hands of the commander of the forces.

The rules of The Hague Convention were drawn with reference to warfare upon land, and have been accepted by practically all the states of the world. The United States authorities would, therefore, be fully justified in demanding that those correspondents only should be allowed with its army who were properly certified.

If it is generally accepted that the military authorities of forces on land should control correspondents, it is even more important that such control should be extended to correspondents in the neighbourhood of naval operations, for the disclosure of movements of a fleet or of a war vessel may be even more serious than a similar disclosure in regard to forces upon land.

Right-minded newspaper men ask for fair treatment only, and would regard regulations which would give equality of opportunity to all correspondents as in every way desirable; otherwise they would not be fit persons to accompany a military force on sea or land.

The control should not, of course, be limited to the correspondents and reporters alone, but should be extended to the whole personnel and all agencies concerned in gathering and forwarding news of the war.

Such control of the personnel and agencies for gathering and forwarding news could be justly demanded; even the Red Cross personnel and agencies must submit to control of the commanding military authority.

The naval commander has a right to control hospital ships accord-

ing to The Hague Convention, 1899, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, which provide that hospital ships

> . . . must not in any way hamper the movements of the combatants.
>
> During and after an engagement they will act at their own risk and peril. The belligerents will have the right to control and visit them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them if important circumstances require it.
>
> As far as possible, the belligerents shall inscribe in the sailing papers of the hospital ships the orders they give them.

The naval commander has full right to demand equal control of correspondents, press boats, despatch boats, and the like, whose mission may be from its nature far more dangerous than the mission of hospital ships to the success of the military plans.

Regulations somewhat similar in spirit to those for the government of hospital ships and personnel would give to the commander sufficient control without unduly limiting the freedom of action of press boats and press correspondents.

It is on its face far more necessary for a State that its commanders should be unhampered in the prosecution of their military operations in order that they may bring them to a successful issue than that the people of a State should know from hour to hour exactly what the military force is doing. This is what the enemy desires particularly to know.

War is not ordinarily undertaken to give an opportunity for the display of journalistic enterprise, and no commander would be justified in unnecessarily sacrificing resources or men to such enterprise. This being axiomatic, it may also be said that the people are entitled to such knowledge of the course of the war as may not interfere with military operations. The commanding officer in a given area is the best judge as to what information shall be published.

This natural conclusion leads to the further one that the commanding officer must control the news sent from the field of operations. This can be done by the common means of censorship of despatches and news. This censorship may extend to the entire prohibition of the sending of any despatches or to the determination of what shall be sent and of the form in which it shall be sent.

From what has been said, it is evident that newspaper correspondents, though using wireless telegraphy, are not *ipso facto* spies. If guilty of acts of spying, then they are, of course, liable to the consequences. The simple sending of messages in regard to the war does not in itself constitute spying. It is an act commercial, rather than military in its nature.

After newspaper correspondents have been forbidden within a given area or after they have been notified not to communicate any news in regard to military affairs, the sending of despatches would constitute an offence with which the commanding officer would have full power to deal.

Conclusion.—Without previous notice in regard to or regulation of the agencies by which newspaper correspondents may send news, it is presumed that all agencies which may not involve perfidy are legitimate. As the correspondents in this instance had not disobeyed any regulation, but had merely, as would be expected, used the most modern means of communication, they are not therefore liable to any penalty. It would be presumed that the agency of the wireless telegraph would be open to them in absence of prohibition and unless forbidden no authorisation would be necessary.

The correspondents would therefore be acting in a proper manner and would not be liable to any penalty for the use of the agency of the wireless telegraph when such use is not prohibited.

This conclusion shows the emphatic necessity of the regulation of news-gathering and transmission on and from the field of military operations.

(*b*) Granting that newspaper correspondents will be allowed in the field of operations, what regulations should govern them?

Japanese Regulations, 1904.—The Regulations for War Correspondents issued by the Japanese Government to hold during the Russo-Japanese War accord with the principles set forth above. These regulations are as follows:

Regulations for War Correspondents.

ART. I. Newspaper correspondents who wish to follow the army are required to make application to the department of war, together with a sketch of their antecedents and a document of personal guaranty signed by the proprietor of the newspaper to which they belong.

In case of foreign correspondents, their application shall be sent through their respective ministers or consuls and the department of foreign affairs. Foreign correspondents need only mention in their application the name of the newspaper to which they belong and dispense altogether with the presentation of sketches of antecedents and papers of personal guaranty.

ART. II. The applicant must have been engaged in journalistic work for not less than a year as a member of a newspaper staff.

ART. III. Foreign correspondents who cannot understand the Japanese language may take with them one interpreter each into the field. Any correspondent requiring an interpreter may engage one him-

self and present an application on the interpreter's behalf accompanied by a paper of personal guaranty for the same.

ART. IV. A foreign correspondent, in addition to his interpreter, may engage one or more servants when circumstances demand it, the procedure of engagement to be in accordance with the foregoing article.

ART. V. The authorities, when they consider it necessary, may cause the selection of one person to act as joint correspondent for several newspapers.

ART. VI. In case any person is allowed to accompany the Japanese forces an official permit shall be given him.

ART. VII. The applicants allowed as stated shall be attached to a "Kōtō shireibu" (higher commanding officer).

ART. VIII. Correspondents shall always wear foreign clothes, and to their left arms shall be attached a white band, measuring about 2 inches in width, on which the name of the newspaper offices which they represent shall be written in Japanese with red ink.

ART. IX. Correspondents shall always carry with them the official permit, and shall, when asked, show it to officers and officials belonging to the Japanese forces.

ART. X. Correspondents shall always observe the rules and orders to be issued by the Kōtō shireibu so long as they remain with the Japanese forces.

In case they disregard the above rules and orders, the authorities of the Kōtō shireibu may refuse to allow them to accompany the Japanese forces.

ART. XI. The war correspondent will not be allowed to despatch his communications (whether they be correspondence for publication or private letters or telegrams, etc.) until after their examination by the officer appointed for the purpose by the higher commanding officer. No communication containing cipher or symbols will be permitted to be despatched.

ART. XII. The army and its officers will accord, as far as circumstances permit, to the war correspondents suitable treatment and facilities, and, when in the field and in case of necessity, give him food, etc., or, at his request, give him transportation in vessels or vehicles.

ART. XIII. In case the war correspondent is guilty of violation of the criminal law, military criminal law, law for the preservation of military secrets, etc., he may be adjudged and punished by the court-martial according to the military penal code.

ART. XIV. Art. VI. to XIII. are applicable to interpreters and servants. (Daily Consular Reports, 1904, No. 1912, p. 2.)

Naval Regulations.—The regulations particularly applying to naval war correspondents are:

Regulations Governing Naval War Correspondents.

ART. I. A newspaper war correspondent desirous to accompany the navy shall make application to the naval staff, imperial headquarters, for permission.

ART. II. A newspaper war correspondent shall obey all orders of the commanding officer of the fleet which he accompanies.

ART. III. No communications concerning war shall be sent until after they have been examined by officers nominated for the purpose by the commanding officer of the fleet which he accompanies.

ART. IV. The commanding officer of the fleet may cancel the permission granted to a newspaper war correspondent.

ART. V. Necessary regulations concerning the treatment of a newspaper war correspondent shall be fixed by the commanding officer of the fleet.

ART. VI. A newspaper war correspondent shall wear European dress and put on a low round-shaped cap, with a visor, and attach on his left arm a strip of white woollen cloth 1 sun (1.193 inches) wide, with the characters . . . (paper correspondent) on it.

ART. VII. A newspaper correspondent shall always carry his permit, mentioned in Art. I., with him, and shall show it when asked by army or navy authorities. (Daily Consular Reports, 1904, No. 1912, p. 4.)

Effect of Japanese Rules.—The effective control of the news relating to military movements during the Russo-Japanese war by the Japanese authorities fully justifies the rules enunciated by Japan. It is doubtless true that some of the correspondents have found it hard not to be upon the field of operations, but war is not undertaken for the sake of gratifying the curiosity of the public which reads the accounts of battles and military movements. Provided the correspondents have had fair treatment, there is no reason for complaint.

The State must determine the general policy in regard to war correspondents, and the commanding officer in a given region must determine the particular application of this policy.

Russian Regulations.—The following, according to the Agence télégraphique russe, are the regulations for the conduct of foreign correspondents allowed within the field of operations:

Les étrangers doivent produire une recommandation de leur gouvernement auprès du Ministère Russe des Affaires Étrangères. Chaque cor-

respondant doit s'engager, par écrit, à ne propager aucune nouvelle contenant des critiques, des dispositions ou des personnes, à représenter les faits conformément à la vérité et à supprimer les nouvelles qui ne peuvent se contrôler. La violation de ces dispositions, les indiscrétions, le manque de tact entrainent des observations, et, suïvant les cas, l'éloignement du théâtre de la guerre. Pour tous les correspondants sans exception, l'entrée de l'amiranté, les docks et autres installations de la marine, ainsi que l'emploi de vapeurs sur les rades de Port Arthur et de Vladivostock, sont interdits. Les correspondants doivent s'engager à ne pas demander d'exceptions à ces dispositions. A leur arrivée sur le théâtre des opérations, ils doivent se rendre au quartier général et prouver leur identité par une photographie; l'état-major général les dirige alors sur l'état-major dont ils dépendent. Ils sont responsables de leurs domestiques. Comme insigne, ils doivent porter un brassard au bras gauche. Les dépêches chiffrées sont interdites. La censure des informations a lieu au quartier général, auprès de l'état-major de l'armée de Mandchourie, et à l'administration militaire de Khorbin, Nion-Chouang, Port Arthur et Vladivostock. (Quoted in Revue de Droit International, VI., p. 448.)

General Scope of Necessary Regulations.—These rules should be such as:

1. To place the correspondents under the control of the naval commander.

2. To place the control of the news sent in the hands of the commander.

3. To enable the commander to prohibit absolutely the sending of any information from the field of operations.

4. To place the agencies by which news is sent under control of the commander.

5. To enable the commander to inflict penalties for violations of any regulations he may make.

The commander should therefore control the correspondents themselves, determine the news to be sent, or prohibit communications entirely, control the means of sending by the establishment of proper regulations and penalties.

Conclusion.—From these conclusions it is manifest that correspondents must obtain a quasi-official standing, and in order that control may be effective, that the agencies by which communication is had shall also be official to the extent of being under absolute military control.

Private, irresponsible persons or agencies would therefore be forbidden within the field of operations or the strategic area.

To show why the Japanese authorities were obliged to pay such great attention to the keeping of military secrets, the following cases are here cited:

Case I. *The Industrie.*

Published on Dec. 18th, 1905, in the *Official Gazette*, Tokyo.

Decision of the Higher Prize Court was given on the 30th of the 11th month of the 38th year of Meiji, in the case of the German steamship *Industrie*.

Case No. LXXXII.

Decision.

Petitioner—Jurgen Block, German merchant; Tsingtao, China.

Advocate—T. Ishibashi, Counsellor at Law. 41. Togiya Machi, Nagasaki.

A protest has been filed by T. Ishibashi, advocate of the petitioner, Jurgen Block, against the decision of the Sasebo Prize Court given on the 13th of the 7th month of the 38th year of Meiji, in the case of the German steamship *Industrie*, which was captured by the Japanese man-of-war *Kasuga* on the 28th of the 3rd month of the 38th year of Meiji, in the vicinity of Kadoek Island, Korea. The original decision condemned the ship. The protest has been tried before this Court, Public Procurators K. Tswziki and B. Ishiwatari taking part.

The purport of the protest filed by the petitioner's advocate, T. Ishibashi, is as follows:

The advocate requests that the original decision be overruled and the ship released. As the grounds for the protest he states,

(1) The original Court assumed this vessel to have been hired by Macdelmidt, the proprietor of the Chefoo *Daily News*, a newspaper published under the protection of the Russian Government, and sent under the direction of the reporter Bannier to the base of the Japanese Fleet, with the object of collecting information and reporting it for the benefit of Russia, basing the assumption upon the following grounds: that the Chefoo *Daily News* was a small newspaper established recently, that it had no means to send out a reporting vessel independently, and that it always published articles partial to Russia. These grounds are, however, mere suppositions of the original Court, not found anywhere in the documents concerning this case. In order to evade the responsibility of producing proof, the Court called them conspicuous facts. The original Court must, therefore, be said to have made unjustifiable assumption of facts.

(2) The original Court, in assuming the above facts, cited statements of Bannier and of the master Uddine. But these statements have no value as grounds for assuming facts. To a question of the Councillor in charge, Bannier answered: "I did not know that before. But your questions make me think it is possible. . . ." The answer of Uddine was, "There was nothing I took hint of from the behaviour of Block. But from the questions I have heard at this Court, it is probable. . . ." Thus, these two admitted merely the possibility of facts of which they had no knowledge, being led on by the explanatory and inductive questions of the Councillor. Thus the two stated that they had no knowledge or idea of such facts, and it is absurd to infer the existence of the facts from such statements.

(3) The petitioner had this vessel insured for two months and a half from the 17th of the 2nd month of this year, and in the insurance policy it was stipulated that the vessel would not be guaranteed north of Otaru, south of the Philippines, or east of Yezo, that the vessel would not proceed above(?) Moji, and that in case the vessel should be sold within one month from the date, one-half of the premium would be returned. In the charter-party concluded between the petitioner and Macdelmidt special stipulations were made in expectation of cases of saving vessels in distress. In a letter of Macdelmidt to Bannier it was stated that the vessel might be inspected by a buyer at Moji or other Japanese port. Seven thousand taels were demanded for the hire of the vessel for three months, but this was reduced to 1500 taels a month. Negotiations were going on with the Kawasaki Dockyard for the sale of the vessel, and there was hope of favourable conclusion; the petitioner in negotiating with Macdelmidt had this expectation in mind. The petitioner believed that on the 24th of the 2nd month of this year the vessel was at Moji. When the petitioner heard that a vessel had run ashore in the Pescadores and that French cruisers were in the Gulf of Siam, he regretted the vessel's being in Japan, saying she would have made a profit in the south. The vessel intended to sail towards the Philippines. The facts recounted above are clear from the documents produced by the petitioner as evidence, and are sufficient to prove that the *Industrie* was not a scouting vessel for the benefit of Russia, but was employed really for reporting war news. According to an affidavit produced by Macdelmidt, he was acting as a news agent for several American papers, and from this it will be seen that he had sufficient income and means, and that he had no evil intention to injure Japan. Consequently, he had no need to receive indemnity from the Russian Government. The advocate, therefore, believes that there were errors in the assumption of facts by the original Court.

The gist of the answer of C. Minakami and S. Yamamoto, Public Procurators of the Sasebo Prize Court, to the above protest is as follows:

(1) It is clear from the statement of the master that the steamship *Industrie* came, on the 3rd of the 3rd month of this year, 40 miles S. W. of Tsushima, that she returned to Shanghai on the 13th, but left again on the 15th, arriving at North Scene(?) Island, Korea, on the 23rd, and that from that day to the morning of the 27th, she was reconnoitring Andersen Island and Quelpart and their vicinity. Moreover, Adolph Bannier, who was on board the *Industrie* as reporter and had the direction of the vessel, stated in the third examination, that the *Chefoo Daily News*, being a small newspaper, it might be that it was receiving the protection of the Russian Government . . .; that his reports, he thought, would be transmitted to the Russian Government through the Russian Consul at Chefoo or Shanghai . . .; and that his reports, he thought, gave benefit to the Russian Government. . . . Inferring from these statements, it becomes very clear that the *Industrie* was not an ordinary reporting vessel, but that its object was to watch the movements of the Japanese Fleet and to make reports to the Russian Government. Again, what the original Court stated as a conspicuous fact, was that the *Chefoo Daily News* has always been partial to Russia and has repeatedly published things injurious to Japan, which is, of course, very clear from the articles of that paper; but it did not say so on the other two grounds. This will be clearly seen, if the decision be read intelligently.

(2) In time of war the base of the main forces of a belligerent's fleet and its movements are his secrets, as every person of fair intelligence knows. A neutral, as a matter of honour, should not divulge any such news, even if he learns it accidentally, and much less should he attempt to find it out. Now, the vessel under consideration is a small craft of about 100 tons, but she braved rough weather and stormy seas, and cruised about the coast of Korea for several days. Her intention could not be other than to discover the whereabouts of the Japanese Fleet. Moreover, it was a conspicuous fact, that at that time there was not a single Russian man-of-war to be seen in the Eastern seas. Thus Bannier's pretext that he intended to watch both fleets impartially was untenable, and answering the questions of the Councillor, he said that it might be so, or that he thought it was a fact. These statements correspond to the facts, and it was not unreasonable for the original Court to take them as evidence.

(3) The facts that the vessel was insured, that there was an agreement to sell the vessel, etc., are not sufficient to prove that she was an ordinary reporting vessel, without any evil intention. On the other

hand, in his fourth examination, the master stated as follows: "I took no hint from the behaviour of Block, but from the question I hear in this Court I believe it true, that the *Daily News* is the organ of the Russian Government, that the *Industrie* has been sold to the Russian Government, and is to be delivered at Vladivostock, that in case the vessel should be captured on the way the Russian Government were to pay 85,000 taels, etc." "At first Block ordered me to proceed to Japan as a reporting ship, but his intention might be to send the vessel to Vladivostock with false papers in order to evade capture. . . ." Again, in the fourth examination of Bannier, to the question of the Councillor: "According to the investigation made by this Court, a contract for the sale of the *Industrie* for 135,000 taels was concluded between Block and Major-General Dessing, of Shanghai, and the price to be paid on delivery of the vessel at Vladivostock, but for fear of capture by Japanese men-of-war, it was stipulated that in such event the Russian Government would pay to Block 85,000 taels. Do you think this true?" Bannier answered: "I did not take part directly in that business. Therefore, I cannot positively assert it to be true, but I think it is." Bannier also stated as follows: "Before leaving Shanghai, Block once told me that in case orders were sent to any port where the *Industrie* was lying to go to Vladivostock, I must go to that port." "I never told the master that the vessel was going to Vladivostock, but at the time of leaving Shanghai the vessel was furnished with charts of the vicinity of Vladivostock. So the master and I thought we were going to Vladivostock. And these charts were furnished, I think, by the order of Block." From these statements, it must be concluded that the vessel was purchased by the Russian Government, and that she, under a secret agreement between the owner Block and the newspaper proprietor Macdelmidt, undertook to collect military secrets of the Japanese Fleet under the guise of a reporting vessel, and to cable what information she obtained.

For the above reasons, the confiscation of the vessel by the original Court was just, and the Public Procurators think that this protest should be rejected.

The reasons of the decision of this Court are explained as follows:

The advocate pleads that the vessel under consideration was chartered by Macdelmidt, the proprietor of the Chefoo *Daily News*, to be employed as a reporting vessel. But the vessel cruised about the Strait of Korea, and at last found the Japanese Fleet in the neighbourhood of Chinkai Wan. And while her destination was given ostensibly as Moji, the owner, before her departure from Shanghai, gave notice of her going to Vladivostock, and furnished her with charts of the vicin-

ity. The Chefoo *Daily News* has always been partial to Russia, and publishes articles injurious to Japan. Moreover, in the examination before the original Court, in answer to the question of the Councillor: "According to the investigation made by this Court, a contract of sale of the *Industrie* for 135,000 taels was concluded between Block and Major-General Dessino, of Shanghai, that the price was to be paid on delivery of the vessel at Vladivostock, and that for fear of capture by Japanese men-of-war, it was stipulated that in such event the Russian Government would pay to Block 85,000 taels. Do you think this true? Bannier answered, "I did not take part directly in that business. Therefore I cannot positively assert it to be true, but I think it is." To another question, "Do you really think that the Russian Government will pay 85,000 taels, and that the *Chefoo Daily News* was the organ of the same Government?" he answered, "I think that is true." He also stated as follows: "On hearing that the Russian Government agreed to pay Block 85,000 taels, and that the *Chefoo Daily News* had been receiving subsidy from the Russian Government, I now think that my reports would be transmitted to the same Government through the Russian Consul at Chefoo or Shanghai, . . . and, therefore, all my reports would benefit the Russian Government." The master also made similar statements. Summing up the above facts and the statements of Bannier and of the ship's master, it might be assumed that the vessel had been sold to the Russian Government, and that while on her way to Vladivostock to be delivered, she attempted, in the interest of the Russian Government, to spy out military secrets of the Japanese Fleet, under the pretext of collecting news for the press. The advocate protests that the original Court erred in taking the statements of Bannier and the master as facts, saying that those statements were led on by the explanatory and inductive questions of the Councillor in charge of the case. But those statements were true, as disclosed by Bannier and the master in the examination by the Councillor, and it is quite proper to assume them to be facts. As to the policy of insurance, the charter party, the letters of Macdelmidt and petitioner, etc., to which the advocate refers, to prove that this vessel was merely reporting for a newspaper, they are not sufficient to overturn the presumption of the facts in the case.

For the above reasons it is very clear that this vessel attempted to search out military secrets of the Japanese Empire, and was employed by the enemy; and that, therefore, the original Court was right in confiscating the vessel. For the other points of the protest there is no need of giving explanation.

The decision of this Court is therefore as follows: This protest is hereby rejected.

Given this 30th day of the 11th month of the 38th year of Meiji, at the Higher Prize Court.

VISCOUNT F. TANAKA, *President of the Higher Prize Court.*
BARON T. NISHI, *Councillor of the Higher Prize Court.*
N. TERASHIMA, *Councillor of the Higher Prize Court.*
K. ICHIKI, *Councillor of the Higher Prize Court.*
S. INOUE, *Councillor of the Higher Prize Court.*
M. HASHIMOTO, *Councillor of the Higher Prize Court.*
H. DOKE, *Councillor of the Higher Prize Court.*
S. TOMITANI, *Councillor of the Higher Prize Court.*
K. MATSUI, *Councillor of the Higher Prize Court.*
W. MATSUMOTO, *Councillor of the Higher Prize Court.*

Case II. *The Samson.*

An extract from the text of the decision, published in the N. C. *Herald* and S. C. and C. *Gazette*, Shanghai, on June 23rd and 30th, 1905.

In this case, Mr. Phillips, the counsel for the defendant, who was the friend of Mr. Bennett Burleigh, addressed as follows:

Counsel, continuing his address, said that the *Samson* was originally bought for a press boat. Mr. Bennett Burleigh came to Shanghai and suggested to Mr. Pavlow that a ship should be bought by him, and he (Mr. Bennett Burleigh) would go to Port Arthur and obtain information. The details as to why this was done would be seen later. Tls. 15,000 was paid to Mr. Bennett Burleigh, part of which was commission and part for the expenses of the steamer. The arrangement was that Mr. Bennett Burleigh should obtain the transfer of this steamer, that he should register at the British Consulate as owner, and that he should give a letter of trust. The letter of trust was given, but it was in the form of a transfer to Ward. Mr. Bennett Burleigh insisted that he should not give anything in writing to Mr. Pavlow or to anyone who held an official position in the Russian Consulate or under the Russian Government. *His reasons for that were that he did not wish it known that his newspapers were in any way connected with the Russian Government.*

The cross-examination of Mr. Ward is worth mentioning here to know the real phenomenon of the case:

To send supplies into Port Arthur, medical supplies, as many as possible, and if possible to get the sick and wounded out, or at any rate the crippled, and put them in a hospital, either at Shanghai or wherever else it might be convenient.

"You say you arrived with the general idea of chartering a vessel for the purpose of taking medical supplies into Port Arthur?"—"I

came here with the idea of carrying out the whole scheme arranged between Colonel Ogorodnikoff and myself in Tientsin, and carrying it through with the aid of Mr. Pavlow."

"What did that include? I want to know all—roughly."—"A press boat was to be bought, and we were to ascertain the exact details of how many wounded and sick there were there and what medical supplies and instruments were necessary. On receipt of that information we were to form an International Committee, and send supplies in. Mr. Pavlow and I discussed this scheme and estimated that it would absorb, as a whole, Tls. 400,000."

"You saw Mr. Pavlow shortly after you arrived?"—"That same morning."

"It strikes me that it was unnecessary to send a boat to ascertain if supplies were wanted. The siege had then been proceeding for some time, prosecuted with vigour and defended with bravery. Was it, then, necessary to send this boat?"—"Certainly. My idea was to find out how many sick and wounded there were. It would be no use to send a small steamer if there were a great many. As a matter of fact, to get this information, ten or fifteen junks had already been sent from Chefoo, but they had all been captured by the Japanese."

"Then the whole thing about sending in medical supplies was a humbug, and you were really trying to run the blockade to get information?"—"We did not try to run the blockade. It was you who suggested that we tried."

"I suggested that it was unnecessary to send a small boat to find out what was really necessary. If you could get a hospital ship through at all, you might have been assured that there must have been many wounded there. Did the *Samson* get into Port Arthur?"—"She got in, but not into the harbour."

"Did she get near?"—"Very near indeed."

"Was her object to find out about the wounded, or to run the blockade and bring comfort to the garrison?"—"How could it bring comfort?"

"I want to suggest that the scheme was not to send in a hospital ship at all, but that you were engaged in many other matters for the Russian Government."—"They were all comprised in that one."

"Were you not engaged in other schemes before this hospital scheme came up?"—"In Tientsin, certainly."

"And were not these the matters you came down to Shanghai to put through?"—"No."

"You wrote a letter to Mr. Pavlow, giving prices asked for the *Samson* and the *Victoria*, and said the captains were engaged, cabling arrangements made, and asked further about a cable?"—"Correct."

"Was that not the scheme you came down here about?"—"That was suggested by Mr. Pavlow, but I have tried to keep it out of this case."

"I know you have tried to keep it out; but was not the *Samson* really bought in connection with this proposed cable?"—"Certainly not."

"This letter is dated the 18th of October, so that the whole matter was arranged within four days of your arrival in Shanghai?"—"Of course, because the purchase had been prearranged in Tientsin."

"Then it was arranged in Tientsin to purchase the *Samson*?"—"Not the *Samson* specifically, but a press boat."

"Your letter of the 18th of October does not mention a press boat, but it does mention the *Samson* and a cable. Was that a mistake?"—"No."

"Does this letter mean what it says?"—"Certainly."

"How is it there is no mention of the press boat?"—"That was the first move in the game."

"You say 'game'; was this a genuine enterprise, or was it not?"—"It was genuine in one way, and in another way it was not."

"Was the cable scheme genuine?"—"Which?"

"The one referred to in this letter."—"It was genuine if it could be laid from Port Arthur to Chefoo."

"That was rather important to the Russian Government?"—"I don't know; it would very likely have been cut the next day."

"It was worth considering?"—"Certainly."

"It was to cost Taels 400,000?"—"Nothing of the sort."

"Have you not in writing estimated that this unimportant side-show would cost Taels 400,000?"—"It was discussed after the *Samson* was bought, and when Mr. Pavlow found the cost the proposal was dropped."

"Considering that your estimate of the cost of it was Taels 400,000, was it not worth while to mention it as part of the scheme?"—"Certainly."

"Was that the scheme referred to in this letter?"—"No; the *Samson* was not suitable for laying cable; cable-laying requires a special steamer. The *Samson* might lay five yards, perhaps."

"But you could hardly borrow the Great Northern's cable steamer under circumstances like these?"—"No; but a good big junk could do it; we had experts to see Mr. Pavlow, but the scheme was dropped."

"You deny that the cable mentioned in this letter was part of the scheme?"—"It was not the scheme."

"And the matter of the printing-press was also not the scheme?"—"It was not."

"That printing-press was useful at the moment?"—"It might have been."

"Did you write, on the 14th of October, about a printing-press to Mr. Pavlow and say that there was only one suitable available, the *Daily Press*; that its cost would be $20,000, and that it would be advisable to buy it, as it was then pro-Japanese, and thus an anti-Russian organ would be disposed of and a good printing-press obtained at the same time?"—"Yes."

"Was that a matter of some moment?"—"Mr. Pavlow promised to buy it."

"Was that also one of the schemes?"—"It was not the important scheme. Mr. Pavlow wrote me that my presence in Chefoo was absolutely necessary and that the matter of the printing-press could stand over."

"Did you consider it of sufficient importance to threaten Mr. Pavlow with an exposé of the buying of it when you sent in your claim later on?"—"I did not; I did say that a promise was made to me about it and was not kept."

"Did you write this letter (threatening an exposé of the purchase of newspapers)?"—"Yes, but about another printing-press. This one had nothing to do with Mr. Pavlow."

"At any rate, in addition to the unimportant matter of the cable, there was the question of subsidising certain newspapers in regard to which you threatened to make exposures?"—"I said that if Mr. Pavlow forced me into court I should no doubt be examined and have to expose these things."

"Did you take no steps in regard to subsidising a paper in Shanghai?"—"Certainly not."

"Did your work in connection with the papers fall through?"—"Which paper? Mr. Pavlow did not buy the *Daily Press*—the paper is still in existence."

"And is not writing pro-Russian?"—"It could not be more pro-Russian."

"That might be from conviction. Was anything paid to a newspaper in Shanghai?"—"With the exception of $3000 or $4000 a month, there was not."

"Did the cable scheme fall through?"—"Yes."

"Then the object for which the *Samson* was bought was simply that she might get into Port Arthur, and find out more or less concerning the state of the garrison and other things?"—"Correct, but not exactly in regard to 'other things.'"

"Was the object simply to find out the state of the garrison?"—"It would not be reasonable not to find out as much as possible about

the state of the garrison, but the real reason for sending her was to find out about hospital needs. Mr. Burleigh might try to get any other information for newspaper purposes."

"What was the cost of the *Samson*?"—"Tls. 105,000, nominally; Tls. 95,000, actually."

CHAPTER VI.

BOMBARDMENT OF SEA COASTS.

In the course of the Russo-Japanese War instances of coast bombardment were by no means few, being chiefly at fortified places. Below is a list of the coast bombardments:

March 6, 1904, the Kamimura Squadron fired at Vladivostock.

May 1, 1904, the Hosoya Squadron bombarded the coast of An-tung-hsien, the enemy returning the fire all the while.

May 16, 1904, a warship, commanded by Commander Togo, fired at Kai-chow, with the view of covering land forces.

May 25, 1904, the *Tsukushi*, the *Heiyen*, the *Akagi*, the *Chokai*, and a flotilla of torpedo boats fired upon Chin-chow Bay, with the view of covering land forces.

Besides the above, bombardment took place at Ta-ing-kow, Kai-ping, Ing-cheng-tsu, Kai-ping-ku, Hsiung-yo-ho-kow, and Hehlung Kiang, which were either occupied or fortified by the enemy.

The following reports are quoted as examples of the bombardments:

BOMBARDMENT OF KAIPING AND KINCHOW.[1]

May 16–17, 1904.

(*Rear-Admiral Togo's report, received in Tokyo on May 19, 1904.*)

With the *Asahi*, *Akitsuskima*, *Chiyoda*, *Suma*, *Oshima*, *Uji*, and the Fourteenth Torpedo-boat Flotilla, I left a certain basis very early in the morning of the 15th inst., and arrived off Port Arthur a little before noon. On learning that the *Hatsuse* had struck two of the enemy's mechanical mines, I despatched the *Oshima*, *Uji*, and the torpedo flotilla on their prearranged mission, and ordered the rest of my squadron to co-operate with the *Shikishima*, *Yashima*, *Kasagi*, and the other

[1] Russo-Japanese War, *Japanese Official Reports in English*, pp. 49–50.

vessels in repelling the enemy's destroyers, which were attacking us, and in rescuing the crew of the *Hatsuse.*

Towards dusk our squadron proceeded on its original mission, and entered the Gulf of Pe-chi-li, arriving in the vicinity of Ta-shan on the 16th at noon. We then reconnoitred the coast in the neighbourhood of Kaiping, and observing some Russian troops on shore, fired at them. The enemy instantly fled. On the afternoon of the 17th, after dragging the sea for mines, we entered Kin-chow Bay, and the gunboats approached the head of the bay. They opened fire on the railway bridges, a military train which was just passing, and on the enemy's buildings. The bombardment is believed to have inflicted some damage on the enemy.

BOMBARDMENT OF KAIPING AND NEIGHBOURHOOD.

June 7 and 8.

(Admiral Togo's report, received in Tokyo on June 12, 1904.)

On the 7th and 8th inst. the Sixth Fighting Squadron, acting as prearranged, bombarded the enemy stationed along the coast between the Kaiping promontory and the mouth of the Hiunyoh river, and also reconnoitred the coast facing the Liaotung Bay. The squadron returned this morning, and reports as follows: The enemy has placed about 3000 infantry and cavalry along the coast near Kaiping, in order to prevent the Japanese from landing there. According to the natives, outposts have been placed at several points along the coast, but the Russians who were stationed at those places have fled to the interior, owing to the bombardment by the squadron. During the bombardment on the 7th, a southward bound train appeared in sight, but stopped at a point about seven and a half miles from Hiun-yoh-cheng, and immediately steamed northward. Since then, up to the 8th, no trains have passed the neighbourhood. On that date the squadron fired at two companies of the enemy's infantry and a squadron of cavalry, in the vicinity of Kaiping Promontory, and inflicted serious damage on them. The captain of the foreign steamer which left Yingkow on the 7th states that, scared by the bombardment of our squadron, the 3000 Russian troops, with 20 guns, who had been stationed at that port, have left there for the north. Again, on the 8th, the Tenth Torpedo Flotilla captured two Russian soldiers at Fuchow Bay. The prisoners came from Man-kia-ling, in Hing-teh-hein, and were leaving Fuchow Bay for Port Arthur by sea. They belonged to the first regiment of the Fourth Cavalry Brigade, and state that two regiments of infantry and a regiment and a half of cavalry, with eight guns, commanded by Major-General Samson, arrived at Man-kia-ling, Wa-fang-keu, and Wa-fang-

tien on two occasions between May 28 and 31. This statement concerning the Russian forces agrees with the report of the Chinese that the Russians in this vicinity numbered 5000. The prisoners also state that trains are arriving at Mankialing three or four times daily from the north, but seldom proceed farther south. When they do go south, they run slowly as far as Wa-fang-ken. The captives possess numerous official documents.

PARTICULARS OF THE BOMBARDMENT OF UNGKWI BAY.

July 17th, 1905.

The *Asahi* publishes an account of the bombardment of Ungkwi Bay, Northern Korea, by Vice-Admiral Kamimura's squadron, substantially as follows:

It was before dawn on the 17th that the squadron reached the Sea of Chosanwan, the only strategical position in the south of the Tumen. At first the *Chitose* and the destroyers were sent into the bay. As no pickets or watch of the enemy were observed on the shore, the destroyers cruised around the bay. There were a few Korean fishing boats, which were, however, free from suspicion. The destroyers then entered Ungkwi Bay, which is a small inlet within Chosanwan, and approached the shore. About the same time some 200 Russian infantry and cavalry, who were on a knoll on the shore, opened fire with their rifles. Heedless of the fire, our destroyers approached the coast, and at 8.30 a.m. began to shell the enemy. The shells fell with remarkable accuracy among the men and horses on the Russian side, many of whom were killed and smashed in a terrific manner, and in less than half an hour the enemy were completely dispersed. The destroyers then reported the fact to the main squadron, and at 9.30 a.m. they, accompanied by the *Chiwaya*, left the bay for another bay called Lojinwan, 10 miles to the south. Five or six Russians were observed on the coast, but they fled as soon as they saw our fleet. The *Chiwaya* and destroyers then bombarded and destroyed the enemy's watch-house on the summit of Geka promontory, and a party of our marines landed. The latter, without meeting with any resistance from the enemy, reconnoitred the place, and returned to their vessels, which left the bay the following day at 1 a.m. The road in the neighbourhood seems to have been newly constructed by the enemy, and is available for the transport of guns. The enemy's forces on the Tumen are about 21,000 or 22,000, with 70 guns.

On the 4th of August, 1905, the following report appeared in *The Japan Times*:

THE BOMBARDMENT OF KASTRIE BAY.

In connection with the recent bombardment of Kastrie Bay, Siberian coast, an Aomori despatch reports substantially as follows:

The weather was very fine when our squadron approached Kastrie Bay on the 24th ult. On arrival at Kresterkamp Point, a scouting party was landed, which, however, failed to discover any signs of Russian troops or inhabitants. In order to survey the neighbouring country, our men ascended the lighthouse, and observed a Russian officer in command of a battery of guns on one of the islands. In the meantime our squadron had entered far into the bay, whereupon the enemy opened fire, but few of their shells hit our vessels. Our squadron immediately responded, and succeeded in silencing the enemy's guns after a severe bombardment, lasting an hour. The town was subsequently set on fire and the sound of a terrible explosion was heard.

During the war, Russia bombarded Gensan in Korea. The report appeared in *The Japan Times* as follows:

The Japanese Consul at Gensan wires, under date of June 30, that at 10 o'clock that morning there was a heavy rainfall, with mist, so that it was impossible to discern anything beyond a distance of two miles at sea. The Russian warships seem to have returned north. Under the circumstances the Japanese at Gensan were exposed to great danger, so that the Consul, and the commander of the garrison concluded that the residents should withdraw from Gensan. Two Japanese soldiers and two Koreans were slightly wounded during the bombardment. A shell struck one of the Japanese Consulate houses, and several other houses were also set on fire. Fire broke out at two places, but it was instantly put out. Altogether, the damage inflicted was quite insignificant.

A Söul despatch, dated June 30, 3.58 p.m., states that telegraphic communication between Söul and Gensan, which was interrupted owing to the bombardment of the Russian torpedo boats on the morning of that day, has been restored.

According to a Fusan telegram to the *Tokyo Asahi*, some of the Russian torpedo boats, which after the bombardment left Gensan in company with the remainder of the Vladivostock Squadron, again appeared at Gensan shortly afterwards, and they seem to have laid mechanical mines in the harbour.

The Russian bombardment at Gensan, however, could not be free from some debate, for it is a trade port without any fortification.

In the East, a trade port provided with a foreign settlement was generally exempt from bombardment, as is well exemplified by the protest filed by General Freemantle, by virtue of which Shanghai and Chefoo escaped bombardment, because they were trade ports, just as was Gensan, fired at by the Russian Navy.

In the earlier days of the Russo-Japanese War, a bombardment at San-shan Island was erroneously reported, which was substantially as follows:

THE SAN-SHAN ISLAND AFFAIR.

In an official note addressed to the Imperial Minister for Foreign Affairs, under date of March 24, the French Minister at Tokyo stated that a communication had been received by his government from the Russian Government, to the effect that on March 10 a Japanese Squadron, steaming off the east of San-shan Island, fired fifty shots at the quarantine station on the island, causing serious damage to the buildings. At the request of the St. Petersburg Government, M. Harmand called the attention of Baron Komura to the matter, as the bombardment of the quarantine station constituted an infraction of Art. XXV. of the appendix of The Hague Convention.

In answer to the communication, Baron Komura stated that the Imperial Government had not yet received any report on the subject from the Commander of the Japanese Fleet, but the Government was of the opinion that the Article in question referred only to land operations, and was not intended to cover the actions of war-vessels.

So far as is hitherto known to the authorities of the Imperial Navy, there was no quarantine station on the San-shan Island, and there were scarcely any public buildings there except the signal tower belonging to the Russian Navy. The French Minister, who was "quick to correct his own error," withdrew his protest at once, when he found out the truth of the matter.

This made it plain enough that there was no blunder on Japan's part; but the fault of the St. Petersburg Government in making a false report became plain enough in just the same proportion.

It could not be avoided that this false accusation should,

in some measure, move the world. But it was fortunate enough for the scholars of the world that Dr. Holland heard of this bombardment, and then published his own views on the subject, which he had long investigated.

"*Naval Bombardment of Unfortified Places.*"[1]

To the Editor of the *Times.*

SIR:

The protest reported to have been lodged by the Russian Government against the bombardment by the Japanese Fleet of a quarantine station on the island of San-shan-tao, apart from questions of fact, as to which we have as yet no reliable information, calls attention to a question of International Law of no slight importance, viz., under what, if any, circumstances is it permissible for a naval force to bombard an "open" coast town?

In the first place, it may be hardly necessary to point out the irrelevancy of the reference, alleged to have been made in the Russian Note, to "Art. XXV. of The Hague Convention." The convention, and the ruling annexed to it are, of course, exclusively applicable to "la guerre sur terre." Not only, however, would any mention of a naval bombardment have been out of place in that "règlement," but a proposal to bring such action within the scope of its 25th article, which prohibits "the attack or bombardment of towns, villages, habitations, or buildings which are not defended," was expressly negatived by the conference of The Hague. It became abundantly clear, during the discussion of this proposal, that the only chance of an agreement being arrived at was that any allusion to maritime warfare should be carefully avoided. It was further ultimately admitted, even by the advocates of the proposal, that the considerations applicable to bombardments by an army and by a naval force, respectively, are not identical. It was, for instance, urged that an army has means other than those which may alone be available to a fleet for obtaining from an open town absolutely needful supplies.

The Hague conference, therefore, left the matter where it found it, recording, however, among its wishes (voeux), one to the effect "that the proposal to regulate the question of the bombardment of ports, towns, and villages by a naval force should be referred for examination to a future conference."

The topic is not a new one. You, sir, allowed me to raise it in your columns with reference to the naval manœuvres of 1882, when a controversy ensued which disclosed the existence of a considerable

[1] *The Times*, April 4, 1904.

amount of naval opinion in favour of practices which I ventured to think in contravention of International Law. It was also thoroughly debated in 1896 at the Venice meeting of the Institut de Droit International, upon a report drafted by myself as chairman of a committee appointed a year previously. This report lays down that the restrictions placed by International Law upon bombardment on land apply also to those effected from the sea, except that such operations are lawful for a naval force when undertaken with a view to (1) obtaining supplies of which it is in need; (2) destroying munitions of war or warships which may be in a port; (3) punishing, by way of reprisal, violations by the enemy of the laws of war. Bombardments for the purpose of exacting a ransom or of putting pressure upon the hostile power by injury to peaceful individuals or their property were to be unlawful. The views of the committee were, in substance, adopted by the institute, with the omission only of the paragraph allowing bombardment by way of reprisal.

I am, sir, your obedient servant,

Oxford, April 2. T. E. HOLLAND.

Recently The Second Hague Conference passed the following Convention:

(Translation.)

Convention Respecting Bombardments by Naval Forces in Time of War.

CHAPTER I. The bombardment of undefended ports, towns, villages, dwellings, or buildings.

ARTICLE I.

Naval forces are forbidden to bombard ports, cities, villages, habitations, or buildings which are not defended.

A place must not be bombarded for the sole reason that there are automatic submarine contact mines anchored in front of its port.

ARTICLE II.

Military works, military or naval establishments, depots of arms or material of war, shops and establishments suitable to be utilised for the needs of the enemy's army or navy, and vessels of war then in the port are not included in this prohibition, and the commander of a naval force may, after demand and a reasonable delay, destroy them by cannon, if no other measures are possible, and if the local authorities have not proceeded to such destruction within the time fixed.

The commander incurs no responsibility in this case for the accidental damage which may be occasioned by the bombardment.

If military necessity, requiring immediate action, does not permit a delay to be accorded, it is understood that the prohibition of bombardment of the undefended city applies, as in the case treated in paragraph 1, and that the commander must take the necessary measures to relieve the city as much as possible of distress.

ARTICLE III.

After express notification, the bombardment of undefended ports, cities, villages, habitations, or buildings may be proceeded with, if the local authorities, having received formal summons, refuse to comply with the requisitions for supplies or provisions necessary at the time for the needs of the naval force in the locality.

These requisitions shall be in proportion to the resources of the locality. They shall not be made except with the authorisation of the commander of the said naval forces, and they shall be, as far as possible, paid for in cash; otherwise receipts shall be given.

ARTICLE IV.

It is forbidden to bombard, for the nonpayment of contributions in money, undefended ports, cities, villages, habitations, or buildings.

CHAPTER II. General provisions.

ARTICLE V.

In bombardment by naval forces all the necessary precautions shall be taken by the commander to spare, as far as possible, historic monuments, edifices devoted to worship, to art, to science, and to charity, and hospitals and places where there are sick and wounded, on condition that they be not used at the same time for military purposes.

It is the duty of the inhabitants to designate these monuments, buildings, or places of assembly by visible signs, which shall consist of large, stiff rectangles, divided diagonally into two triangles, the upper one black and the lower white.

ARTICLE VI.

Except in case where military necessities do not permit, the commander of the attacking naval force shall, before beginning bombardment, do everything in his power to warn the authorities.

ARTICLE VII.

It is forbidden to abandon a city or locality to pillage, even when taken by assault.

Professor Westlake remarks in his work on Art. I. of this Convention as follows:[1]

[1] Westlake's *International Law*, Part II., p. 315.

Refusals to accept the second paragraph, Art. I., were registered by Great Britain, France, Germany, Japan, and Chile. They were right. A place cannot be deemed undefended when means are taken to prevent an enemy from occupying it. The price of immunity from bombardment is that the place shall be left open to the enemy to enter.

PART IV.

NEUTRALITY.

CHAPTER I.

RUSSIAN WARSHIPS IN NEUTRAL PORTS.

The following is the table showing Russian vessels in neutral ports:

Name.	Classification.	Displacement Launched.	Entered.	Disarmed.
In Shanghai.				
Mandjur.....	Gunboat.....	1,224	Before the war.	30, III., '04
Askold.....	Cruiser	5,905	13, VIII., '04	31, VIII., '04
Grozovoi.....	Destroyer.....	312	12, VIII., '04	"
Bodri	"	350	4, VI., '05	VI., '05
Korea.....	Special service ship.....	6,163	29, V., '05	
Meteor.....	"	4,259	25, V., '05	
Svir.....	"	6,000	29, V., '05	
Curonia.....	Transport.....	1,658	25, V., '05	
Livonia.....	"	1,048	"	
Vladimir.....	Volunteer Fleet	10,750	"	
Yaroslave.....	"	8,950	"	
Voroneji.....	"	10,750	"	
In Chefoo.				
Ryeshitelni....	Destroyer	240	11, VIII., '04	Detained.
Ratstoropny...	"	"	16, XI., '04	Blown up.
Vlastni.....	"	312	2, I., '05	1, '05
Serditi.....	"	240	"	"
Skori.....	"	"	"	"
Statni.....	"	"	"	"
In Kiao-chau.				
Tzesarevitch...	Battleship	12,912	11, VIII., '04	15, VIII., '05
Bezposhchadni.	Destroyer.....	350	1, VIII., '04	"
Bazstrachini...	"	"	"	"
Bezshumni....	"	"	"	"
Boiki.....	"	"	"	"
Smyeli.....	"	240	2, I., '05	4, I., '05

Name.	Classification.	Displacement Launched.	Entered.	Disarmed.
In Manilla.				
Aurora.....	Cruiser	6,731	3, VI., '05	VI., '05
Oleg.....	"	6,645	"	"
Zamtchug.....	"	3,103	"	"
In Saigon.				
Diana.....	"	6,731	24, VIII., '04	10, IX., '04
In San Francisco.				
Lena.....	Corv. Cruiser	10,225	12, IX., '04	IX., '04
In Batavia.				
Terek.....	.....	.....	29, VI., '05	

Sect. I. Russian Warships at Shanghai.

I. *The Mandjur Affair.*

The enforcement of internment and disarmament of a belligerent warship in neutral ports after the expiration of a certain term granted may be regarded as a new item added as a direct result of the late war to stipulations of International Law, and the *Mandjur* affair now under consideration was the very first one of many cases which contributed to the establishment of the new understanding, though in the particular case, slight differences existed from other similar affairs in the time and place of its sojourn.

The following report is here inserted as containing the most reliable particulars of the affair:

The Russian gunboat *Mandjur* (1224 tons), which had been staying for some time at Shanghai prior to the outbreak of the Russo-Japanese war, had taken on board a large quantity of coal since February 10th, 1904. On the 11th she was brought alongside the quay facing the Chinese Eastern Railway Company's godown, and a large quantity of ammunition was taken on board. Upon this, on Feb. 11th, the Japanese Consul-General at Shanghai called the attention of the Chinese local authorities to the matter. The Tao-tai of Shanghai demanded the commander of the *Mandjur* to leave the port as soon as possible, but

the latter would not consent. The Chinese Government proclaimed their rules of neutrality about the middle of February, according to which belligerent warships were prohibited from staying more than 24 hours in any Chinese port, except in certain specified cases. Consequently, on Feb. 19th, the Imperial Government instructed the Japanese Consul-General at Shanghai to demand the Chinese local authorities to urge the departure of the *Mandjur*, pointing out that her presence at Shanghai constituted not only a menace to trade, but also a gross violation of the rules of neutrality proclaimed by the Chinese Government, and at the same time to announce that H. I. J. M. S. *Akitsushima*, which proceeded to Woosung on Feb. 19th, would leave within 24 hours, in accordance with the said rules.

Thereupon the Shanghai Tao-tai sent a note to the Russian Consul-General demanding the withdrawal of the *Mandjur* within 24 hours, commencing from 5 p.m., February 20th, to which the Russian Consul replied to the effect that, as certain arrangements had been made between the Russian Minister to China and the Wai-wu-pu, he desired to do nothing until he received instructions from the Russian Minister.

On February 22nd the Imperial Government instructed the Japanese Minister to China to declare to the Chinese Government that in case of the non-withdrawal of the *Mandjur* from Shanghai within the prescribed time, the Chinese Government should, by her right of neutrality, put the gunboat in such a condition during the continuance of the war as to be unable to participate in belligerent action, and that in case of the failure to effect this obligation of neutrality on the part of China, the Imperial Government would be forced to send their warships to Shanghai, and that the Chinese Government would be held responsible for any consequences arising out of it.

On February 24th the Chinese Government requested the acceptance by the Imperial Government of the following arrangements agreed upon between the Chinese Government and the Russian Minister to China, by which the *Mandjur* was to be disarmed, leaving her guns, rifles, and ammunition in charge of the Municipal Council, the Russian Minister to solemnly promise by an official communication that the gunboat would not leave Shanghai until the termination of the war. But the Imperial Government did not regard the above arrangement as a satisfactory guarantee for the future, and replied to the Chinese Government that the Imperial Government deemed it essential either to remove the machinery necessary for navigation, or to place her under the direct control of the Chinese Government.

Upon this, further negotiations were carried on between the Chinese Government and the Russian Minister, and the Shanghai Tao-tai, on March 7th, informed the Japanese Consul-General at Shanghai that he

had demanded the Russian Consul-General to remove the breech-blocks of guns, rifles, ammunitions, and necessary machinery from the gunboat, and at the same time requested the withdrawal of the Japanese warship from Woosung.

On March 10th a proposal was made to the Japanese Consul-General at Shanghai by the French Consul, at the request of the Russian authorities, that if it was not objectionable to the Imperial Government, the greater part of the crew of the *Mandjur* would be sent home by a French mail steamer, and that before their departure, a written pledge would be given that they would not participate in the present war. The Imperial Government replied through the Consul-General that they had no objection to sending the greater part of the crew home under the written pledge not to engage in hostile acts against Japan during the present war. The disarmament of the *Mandjur* was slowly carried out then by removing the breech-blocks of the guns and by transshipping her ammunition to the Chinese warship *Nansoy*. Meanwhile the Shanghai Customs authorities expressed a desire to the Japanese Consul-General to leave the shells on board the ship, as they feared accidents in handling the same, and the Imperial Government gave their consent thereto, and at the same time instructed the Japanese Minister at Peking to urge upon the Chinese Government to bring about a speedy solution of the *Mandjur* question.

On March 21st the Japanese Consul-General at Shanghai telegraphed that, as it was inconvenient for the Shanghai Customs authorities to take charge of the rifles and revolvers and keep them in good condition, they wished to leave them also on board the *Mandjur*, now that the necessary machinery as well as the ammunition was to be landed. This was also consented to by the Imperial Government.

On March 23rd the Russian Minister to China demanded that the Chinese Government cause the Japanese warship to withdraw at once from the port, on the ground that the disarmament of the Russian warship had been completed. To this the Wai-wu-pu replied that unless the necessary machinery was, in accordance with previous arrangement, removed from the Russian warship, they could not demand the withdrawal of the Japanese man-of-war. On March 29th the *Mandjur* was moored alongside the wharf of the Chinese Eastern Railway Company, and the vital part of her machinery at last landed. The written pledge given by the commander of the Russian warship (concerning the crew who were to be sent home by the French mail leaving on March 30th) was handed, through the French Consul, to the Japanese Consul-General at Shanghai.

On March 30th the Japanese Consul-General at Shanghai, together with the commander of the *Akitsushima*, inspected the arms removed

from the Russian warship. As everything proved quite satisfactory, the *Akitsushima* cleared out of the port on March 31st, upon receipt of telegraphic instructions, and the Imperial Japanese Minister at Peking was instructed to communicate the above fact to the Chinese Government.

The author's argument published on the occasion of the *Mandjur* affair, under date of March 2, 1904, is inserted below:

On the Mandjur Affair.

Before entering into the discussion of this affair, the author is going to refer briefly to the opinion of his admired friend, Rev. Dr. Lawrence. He says:

"Unfortunately for Russia, the *Mandjur*, a Russian gunboat, was lying in the neutral harbour of Shanghai at the outbreak of hostilities. The Japanese naval authorities promptly sent the cruiser *Akitsushima* to watch the mouth of the Yang-tse, off Woosung. Stationed there, she blocked the only way whereby the *Mandjur* could reach the open sea and the Port Arthur Fleet. The position was certainly a trying one for the Russian commander. China, the territorial power, exercised its undoubted right as a neutral and ordered him to leave within twenty-four hours. Full in his path lay an enemy of greatly superior force. If he departed, he went to certain capture or destruction. If he remained, he broke International Law by defying a neutral government. He chose the latter alternative. The Chinese executive was too weak to risk the consequences of determined action. They might have detained the gunboat for the rest of the war, or fired upon her if she persistently declined to move, or escorted her out to sea, leaving her to take the chances of battle or escape when well outside the territorial waters. But they did none of these things. Instead they parleyed. Japan, on the other hand, might have given notice to China that she would no longer respect the territorial waters of a State which seemed powerless to defend its neutrality, or she might have claimed reparation for the indulgence shown to her opponent. But she was extremely anxious not to drive matters to extremities, and to stand well with China and the rest of the world. So she, too, parleyed; and as the result of a sort of three-sided negotiation between herself and China on the one hand, and Russia and China on the other, the gunboat was dismantled so thoroughly as to make her permanently useless, and the *Akitsushima* was then withdrawn from her long watch at the mouth of the Yang-tse."

It is regrettable that some part of his opinion is based upon a false conception of the facts. He says that the *Mandjur* anchored at Shang-

hai before the outbreak of the war, and that Japan despatched the *Akitsushima* to the port after the war had begun and was prepared to seize her when she came out. But this is a misunderstanding on his part. The *Akitsushima* had been there at anchor before the war broke out, and had not been sent there with any special purpose of seizing or sinking the *Mandjur*. Moreover, though his observations on this affair may appear quite reasonable from a legal point of view, it is to be regretted that he discusses the question without laying any special importance upon the following fact. Now, Shanghai was made a neutral port at the time of the Chino-Japanese War. Belligerent ships could not enter the port. Shanghai, Woosung, and their vicinity were then recognised as neutral by Japan, as well as by foreign countries. Such being her history, Shanghai is a locality where warlike operations had to be avoided. As the *Mandjur* lay at anchor there before the war broke out, she was in no position to be sunk by force, as argued by Dr. Lawrence. It is plain enough that she could not be bombarded by any means, judging from the geographical features of the port. If sunk at her moorings it would obstruct much of the navigation of the Yangtzekiang. In short, the *Mandjur* affair is quite different in its circumstances from those of the *Ryeshitelny* case at Chefoo (which case justified the strong measures resorted to, as explained by the Japanese Government). Dr. Lawrence did not know about these circumstances, and his opinion about the *Mandjur* was perhaps similar to that of the Japanese Government relative to the *Ryeshitelny* affair.

The author's observations on the *Mandjur* affair at the time of its occurrence, which he expressed then at the Japanese Foreign Office, were as follows:

I. *The Action of the Mandjur.*

The action plainly infringes upon the right of the neutrality of China. But suppose Russia answered that the *Mandjur* was at Shanghai from the peaceful days before the war, for the purpose of guarding the Russian Consulate and Russian subjects, with no relation at all to the war, and that consequently she could remain at Shanghai even after the war broke out, what should Japan say to this? There is a case somewhat like this on record. In the *Linois* affair, which occurred in the Franco-German War of 1870, the French Government justified itself in the same way. But it was grounded upon the following regulation contained in the declaration of the Japanese Government of her neutrality. "Although some countries have been permitted to have their soldiers stationed on Japanese soil, their warships at anchor, and their naval barracks built in our open ports, this is entirely for the purpose of their guarding the merchants of their own countries resident

there in time of peace, and never for that of giving them conveniences for taking any belligerent operations on their part. Consequently they are forbidden to make use of these privileges for warlike purposes beyond what are permitted in time of peace." That the *Linois* remained at Kanagawa during the Franco-German War was thus justified as a right legally based upon the Japanese regulations for neutrality. But the circumstances of China at this juncture were different. She did not bind herself with similar regulations of neutrality. On the contrary, she clearly prohibited any belligerent ships to stay more than twenty-four hours. She refused to let the *Mandjur* stay at that port under the pretext of guarding the consulate, etc. The *Mandjur* stayed there in spite of refusal, and thus the Russian warship was infringing upon Chinese rights. And if China acquiesced in the stay of the *Mandjur* with any malicious intention, China would be responsible to Japan on account of her neutrality. But she seems in fact to have had no such malicious intention.

II. *The Action of China.*

Observed from the *droit d'Asile* of neutral states, some scholars argue that neutral states may give the right of asylum to belligerent warships in their own ports. They assert that neutral states may resist, if need be, the violent actions taken by the warships of one belligerent towards those of the other.[1] Now the case of the *Mandjur* affair was that of seeking refuge in a Chinese port from a superior force of the enemy. The right of asylum may be theoretically acknowledged to be extended to the warships belonging to one belligerent and staying in a neutral port with such a hope. But the Chinese regulations for her neutrality do not recognise a long sojourn in her ports in order to avoid being attacked by the enemy. Thus it is plain enough that the action of China could not be defended upon the ground of *droit d'Asile* of neutral states.

The Twenty-Four-Hour Rules.

There are various kinds of twenty-four-hour rules. France makes it a principle not to place any limit on the time for men-of-war of a belligerent state to stay in the enemy's ports, but to prohibit their staying over twenty-four hours when they have brought captured vessels with them, except in case of irresistible force or for some other

[1] Davis 433—Asylum to Armed vessels—a similar right of asylum exists in the case of public and private armed vessels, and to merchant ships belonging to either belligerent. They may seek refuge in a neutral port from the perils of the sea or from a superior force of the enemy. The protection of the neutral government is extended to them so soon as they come within its territorial waters, and it may resist, by force if need be, any hostile attempts that are directed against them while within its jurisdiction. (The president and prize VII., opin. Gen. p. 122.)

legitimate cause. Brazil has a similar rule, the only difference being the exception clause made clearer by the addition of a phrase expressing the case of being threatened by a superior enemy. An ordinary kind of twenty-four-hour rules prohibits any man-of-war of a belligerent state from staying over twenty-four hours. China has adopted these common rules, and it must be stated to have been her duty to make the Russian gunboat *Mandjur* depart when twenty-four hours had elapsed after the outbreak of the Russo-Japanese War. But China allowed the Russian boat to stay over twenty-four hours, which may be looked upon as an infraction of the laws of neutrality; and it may be argued to have been tenable for Japan to dispose of the Russian gunboat as she saw fit after the lapse of twenty-four hours. As far as the author can see, this argument is not quite correct. It was through neither neglect nor a malicious intention on the part of China that the Russian gunboat stayed at Shanghai over twenty-four hours. On the contrary, China did not fail to take the necessary steps in demanding the Russian boat to depart within the prescribed time; so that the responsibility of the case should be stated to have been not on China, but rather on the Russian gunboat herself, although it was an impossibility for Japan to call Russia to account during the war. The author cannot, therefore, help concluding that it was practically impossible during the war to get any reasonable solution as to the responsibility for the remaining of the *Mandjur*.

How was the Mandjur to be Disposed of?

The question about the disposal of the *Mandjur* has invited several opinions; but the decision of the Chinese Government to make her prolong her stay, after taking off her arms and the important parts of her navigating machinery, was the result of a careful consideration, and may be said, if looked at in a certain light, to have added a reasonable new precedent to International Law, although there are some who attempt to blame the decision from a political sense. The author will try to study the question with calmness of mind from a theoretical as well as a practical point of view.

1. *Was the Mandjur to be Convoyed by Chinese Men-of-war to a Place of Safety?*

When war vessels or merchant vessels of both belligerent states happen to be in a neutral port at the same time, the neutral State has a right to demand not to have any acts done in the port that may infringe upon the sovereignty of the state; and may detain the war vessels of either belligerent state for twenty-four hours after the departure therefrom of the war vessels or merchant vessels of the other

belligerent state. Some scholars go a step further and argue that war vessels of a neutral state (Chinese war vessels, for example) may convoy a war vessel or merchant vessel (the *Mandjur*, for example) of either belligerent state in a neutral port (Shanghai, for example) to a place of safety beyond the neutral waters.

(Dana's note on Wheaton, 208.—Belligerent acts in Neutral Waters.—If a cruiser is within the neutral waters, though not in port, *the neutral may convoy the belligerent in port beyond its waters*, and insist that the other shall keep within the waters for a reasonable time thereafter. See also Halleck's International Law, 517–523; Kent's Comm., I., 118–125; Heffter, Sect. 146–159; Hauteheuille, 6 tit. 1. Ch. Artolan, Regl. I., II., ch. 8. Manning, 387.)

If, according to this argument, the *Mandjur* had been convoyed to a safe place beyond the neutral waters, and enabled as a consequence to unite with the Russian Squadron at Port Arthur or Tailenwan, it would have been an act of extreme partiality; although it cannot be disputed that such an act can be fully supported by the above theory, notwithstanding the practical partiality of its ultimate results. However, such a course was not adopted in the actual disposal of the *Mandjur*, which, the author is inclined to say, was a step well suited to the real circumstances at that time.

2. *Was the Mandjur to be Compelled to Vacate the Port and then to be Attacked?*

The law of capture makes it a principle for a belligerent war vessel not to attack vessels of the enemy outside a neutral port; in other words, the law prohibits hovering for the purpose of capture.

(The Anna 5, c. Rob. 385 e.—opinion of Lord Stowell; Hovering belligerents, see Walker, p. 175, Lord Lyons to Mr. Seward, May 4, 1863, U. S. Dipl. Corresp., 1863, p. 523.

Wheaton, with notes by Dana, Sect. 428—Capture, Hovering on the coasts.)

However, this principle does not extend to men-of-war; and, since a war vessel cannot be made an object of capture, it cannot be said to mean to prohibit a belligerent war vessel from waylaying and attacking an enemy's war vessel outside of a neutral port on her coming out of it. But here the legislative spirit that prohibits a hovering capture requires a careful consideration. Capture of merchantmen is prohibited inside of a neutral port; but if it is permitted outside the port, the prohibition inside the port not only loses its practical effect, but the port will afford a good place for waylaying and attacking; hence the prohibition of hovering capture. This legislative spirit should be extended to the case of war vessels; if otherwise, the twenty-four-hour

rules will practically come to lose their intended effect, for belligerent war vessels, having left a neutral port twenty-four hours previous, can hover just outside the neutral waters and attack an enemy's war vessels which afterwards come out of the port. It would not, therefore, have been fair to take such a step as to waylay and attack the Russian gunboat after causing her to go out of the neutral port of Shanghai.

3. *Was it Impossible to Make the Mandjur Surrender?*

This is not a question to be discussed from the juridical theory, although it might have been a well-adapted practical solution of the case, the Russian gunboat having then actually been in a dilemma. Such a question is not limited to the *Mandjur* at Shanghai, but was likely to arise at Port Arthur or Vladivostock; and it may not be amiss to say a word on this point, based on what the author has heard. According to Russia's naval law, when a Russian warship meets with an enemy so superior in force that her resistance is hopeless, her commander is authorised to surrender to the enemy on a unanimous accord of her whole crew, provided he once takes an attitude of resistance, by opening fire on the enemy. It might therefore have been well, according to the Russian law, if advice to surrender had been given to the *Mandjur*; and it may still be so with regard to future cases in connection with the Russian warships at Port Arthur or Vladivostock. It should, however, be noted that advice to surrender not being, of course, a demand of right, it must be said to be rather a worthless opinion, if estimated in the light of mere legal argument.

4. *Was it Admissible for Japan to Sink the Mandjur by Fire at Shanghai?*

(1) *Study of Precedents.*

We have several precedents of sinking an enemy's war vessels by fire in neutral ports, a few conspicuous ones being as follows:

(*a*) The *Essex* case, during the War of 1812 between Great Britain and the United States.

(*b*) The *Levant* case.

(*c*) The *General Armstrong* case.

Dana's note on Wheaton, 208.—"During the War of 1812 between the United States and Great Britain, the United States frigate *Essex* was attacked and, while at anchor, compelled to surrender; she was dismasted in Valparaiso by the British frigate *Phœbe* and sloop-of-war *Cherub*. The sloop-of-war *Levant*, a recent prize of the United States frigate *Constitution*, was chased into Port Praya, and captured while at anchor there by vessels from the British Fleet. The United States

vessel *General Armstrong*, then lying in the harbour of Fayal, was destroyed by vessels from the British Fleet."

On examining these precedents it is found that all of their actions carried proper reasons, and that the attack of the enemy's war vessels were not carried out arbitrarily. The arbitration of the *General Armstrong* case was as follows:

If a belligerent war vessel in a neutral port does not apply to the neutral State, but attempts to herself offer a resistance to the other belligerent, the latter may sink her by firing thereon; but it is an outrage unwarrantable by legal theory to sink an enemy's war vessel without resistance in a neutral port after the neutral State has come to mediate between the belligerents on the application of the other.

(2) *Study of the Position of Shanghai.*

The interests of nearly all the Powers are represented in Shanghai, and Great Britain, especially, insists on having great interests in that port. At the time of the Chino-Japanese war, Great Britain insisted on having Shanghai placed outside the circle of warlike operations, and sent a letter to Mr. Mutsu, Japanese Minister for Foreign Affairs, under the signature of the R. L. Budget, British Chargé d'Affaires, to the effect that if the communication with Shanghai was interfered with on account of the outbreak of hostilities between Japan and China, the loss and injury to be sustained by Great Britain would be very heavy, as she was most deeply interested in that port, it being the centre of her trade in the Far East. Japan was therefore requested to agree beforehand not to make any warlike operations against Shanghai and its approach. To this request agreement was given by the Japanese Foreign Minister, the following instructions having in the meantime been given out as a result of consultation between the Foreign Minister and the Minister of the Navy:

"Tokyo, 25th July, 1894.

"SIR:

"With due respect to international morality, and desiring not to give harm to the trade of our treaty Powers, we have decided not to make warlike operations against Shanghai and its approach.

"By Order,

"Chief of the General Staff."

"To the Commander-in-Chief of the Combined Squadron."

The author does not think it juridically proper to look at Shanghai as a neutral place when China herself was an enemy; but circumstances compelled Japan to recognise the port as a neutral place during the Chino-Japanese War. It cannot be helped in International Law

that such a fact can exist as a precedent, although it does not conform with juridical theory. Now, as may be seen by the above narration, a warlike operation was restrained at Shanghai even when China herself was an enemy. It may thus be plain, without further explanation, how much more difficult circumstances would have been in making warlike operations at Shanghai when China was a neutral State. Consequently the stay of the Russian gunboat at Shanghai should have been objected to by Great Britain (there being more reasons to demand her departure than that it was an ordinary neutral port of China), while it was plain at the same time that Japanese warships could not bombard her in that port.

The above is an explanation of the special circumstances existing historically on the position of Shanghai, which shows the difficulty of solving questions of this kind simply by theory.

Besides, the place where the *Mandjur* anchored was the quay in front of the premises of the Nippon Yusen Kaisha, where ships and cargoes of all the countries are always assembled. How serious an effect there would have been if fire had been opened and a warship sunk at such a landing, the reader may easily imagine if we suppose a case of sinking a steamer by fire at Reiganjima, Tokyo, great as is the difference between the circumstances of the two places. It is therefore most evident that the bombardment would have been a step most inadmissible from a practical point of view.

Those in charge of business have often to pass through various complications before they can decide a question: so much so, that he should be called inconsiderate, who attempts to offer a criticism of a result, not knowing the conditions by which it was reached.

(3) *The Disarmament of the Mandjur.*

What was then to be done with the *Mandjur*? It was not admissible to convoy her out and ultimately augment the strength of the Russian Squadron. It was unfair to compel her to come out, in order to attack her outside the port. To cause her to surrender was another course; but if she refused to come to terms, what then? As for bombarding her, at present difficulty is felt in finding appropriate juridical reasons for such a step, not to speak of the difficult circumstances in relation to the position of the port. Thus, there not being any specially good plan, it should not be called unlawful, but a proper punishment, and a good precedent opened for application in such future cases, to make the gunboat stay at Shanghai during the continuation of the Russo-Japanese War by taking off her guns as well as the important parts of her navigating machinery.

It may be added here, in order to prevent any misunderstanding,

that if the Russian gunboat had broken her promise to take off her guns and the important parts of her navigating machinery, the question would have assumed a new aspect, giving to both Japan and China a right to take necessary steps in adjusting the matter relative to the Russian boat.

II. *The Askold and the Grozovoi at Shanghai.*

Two Russian warships, the *Askold* and the *Grozovoi*, escaped to Shanghai, after having been defeated in the naval engagement of August 10th, 1904.

The *Askold* entered the Cosmopolitan Dock there on Aug. 14th at 3 p.m., and the *Grozovoi*, at first tied to the seventh wharf of the harbour, later steamed up stream, and cast anchor by the quay of the East China Railway at 6.35 p.m. the same day.

Thereupon the following principles were established by the Japanese Government in regard to the treatment of those fugitive Russian men-of-war:

Shanghai possesses peculiar circumstances, by virtue of which it calls for a treatment quite different from the rest of the Chinese territory.

1. Shanghai, though a part of the Chinese territory, may be considered practically as a settlement common to all the Powers.

2. Neutrality at Shanghai may be secured, if necessary, by an international negotiation, without solely depending on Chinese efficiency.

As a result of a proper consideration of these peculiar circumstances, the following notification was addressed to Chinese authorities:

The period of 24 hours granted having already expired, the Russian warships should be ordered to leave the port, and if they decline to depart, they should be disarmed and detained there, without any repair, until the end of the war. If the Chinese Government find it impossible to execute the enforcement of these neutrality regulations, the Japanese Government reserves the right to take such measures as it may deem proper, leaving all the consequences to be borne by China.

Notwithstanding Japan's repeated pressure on Chinese authorities, the Russian warships would consent neither to depart within the allotted period, nor to be disarmed. Thereupon the Japanese Government sent to the Powers the notification inserted below as containing the full account of the proceedings: [1]

[1] *Foreign Relations*, 1904, pp. 426–427.

Sent Aug. 25th, 1904.

"The Russian cruiser *Askold* and destroyer *Grozovoi*, escaping from Port Arthur, entered Shanghai on the 13th inst., having arrived at Woosung on the previous day. The 24 hours prescribed by China's Neutrality Regulations passed, but the Russian ships showed no sign of taking their departure. Consequently the Japanese Consul-General at Shanghai, acting under instructions of the Imperial Government, addressed a communication to the Taotai of Shanghai, pointing out that as the two vessels had already remained in Shanghai for more than 24 hours, they should be called upon to take their departure at once, and in case of their refusal, they should be disarmed and detained at Shanghai until the end of the war, without being permitted to make repairs.

"The Consul-General added that the Imperial Government reserved the right, if neither of the above alternatives was enforced, to take such action as they might deem proper, and that the responsibility for the consequences would rest with China.

"The Taotai acceded to the demand, but he proved quite powerless before the Russian Consul, who, notwithstanding the former's repeated pressure, categorically refused to effect either of the two alternatives, and persistently adhered to his equivocal declaration that the vessels would be prepared to leave the port only upon completion of the repairs which were under contemplation.

"It then transpired that those repairs were of a very extensive nature, almost tantamount to the restoration of fighting power to the vessels, requiring, in case of the *Askold*, four weeks for their completion. To permit such repairs would be evidently incompatible with the neutral obligation of China. Accordingly the Japanese Consul-General at Shanghai was again instructed to call the most serious attention of the Taotai to the matter and to demand that the repairs to be permitted the Russian warships should be of such nature as were required to make them seaworthy, and that the period therefor should be limited to two days. He had further to warn the Chinese authorities that in case of China's acquiescence in the restoration of the fighting power of the Russian ships by allowing the repairs as planned by them, Japan would be compelled to take such measures as might seem proper. It was only after a great deal of hesitation and repeated pressure of the Japanese Consul-General that the Taotai at last notified the Russian Consul, on the 19th inst., in the sense Japan desired. But this again met peremptory refusal on the part of the latter, who in reply declined on behalf of the two vessels to submit to any limitations or conditions. In the meantime the Imperial Government, on the 19th

inst., instructed their Minister at Peking to formally notify the Chinese Government to the following effect:

"'That the Russian warships should be called upon to take immediate departure from Shanghai. If they are really unable to so leave on account of their damages, two days' repairs should be permitted to them to make them seaworthy, and no more. In case, however, they are unwilling to leave Shanghai, they should be disarmed, without making any repairs, and detained in the port until the conclusion of the present war.

"'In the event of China's failure to enforce either of the three alternatives above set forth, the Japanese Government would take such measures of self-protection as they may deem necessary, and resultant responsibilities for the consequence will rest solely with China.'"

In view, however, of the difficult position under which the Chinese Government were labouring, the Japanese Government consented to fix the 21st of August at noon as the time upon which the two days' period above alluded to should commence, and the Chinese Government assured the Japanese Minister that it would at once take the necessary steps to inform the Russian Minister in China and the Taotai of Shanghai in the sense desired by Japan. It was with great surprise that the Japanese Government learned through their Minister in Peking that, notwithstanding the assurance given, as above stated, the Chinese Government granted, on the 23rd inst., further extension of time for the completion of repairs and departure of the ships, until noon of the 28th inst. Against such extension the Japanese Government protested and declared that they would be compelled to have recourse to such action as they considered proper, and that the responsibility for the consequences would rest entirely with China.

"The foregoing are the more important facts of the case, and beyond question they constitute a grave infraction of the neutrality of China to the serious prejudice to the belligerent rights of Japan.

"Having in view, however, the special interests of the Powers in the port of Shanghai, the Imperial Government had exercised, as they did in the case of the *Mandjur*, a degree of forbearance and restraint. They gave sufficient proof of their earnest desire not to disturb the orderly state of affairs at that place. But it is not to be expected that the Imperial Government would consent to an indefinite continuation of a condition of things which constituted a grave menace to their warlike operations, as well as to their commerce.

"But having regard to the interests of the Powers involved in the maintenance of the orderly state of things in the port of Shanghai, the Imperial Government thought it right to bring the actual state of things to their attention before the exigencies of the situation compelled them to take final action."

On the 26th of August, 1904, the Japanese Government, deeming it unjustifiable that the Chinese Government should defy the stipulations of International Law and without consulting them, by prolonging the period allowed to the Russian warships so that they could be repaired, demanded of the Chinese Government the fulfilment of the following articles, with the assurance that Japan reserved the right of taking such measures as might seem proper to them for self-defence:

1. The disarmament shall be set about without the slightest delay.

2. Arms and ammunition and essential portions of the engines shall be landed and taken in custody by Chinese authorities.

3. Russian flags, if any, shall be hauled down.

4. No repairs shall be permitted, as it would tend to increase the fighting capacity.

5. The disarmed warships shall be put in custody of Chinese authorities, and under no circumstances suffered to leave Shanghai.

6. As the repatriation of the crew tends to increase the Russian fighting capacity, as was well shown by the cases of *Variag* and the *Mandjur*, whose crews are reported to have retaken arms, the crews of the *Askold* and the *Grozovoi* shall be ordered to leave their vessels and be interned by Chinese authorities until the end of the present war.

It was only after such a determined representation that the disarmament of the two men-of-war was set about in the manner shown in the documents annexed:

Ammunition, etc., Removed from the Russian Cruiser Askold.

2 boxes containing seven 47 mm. breech blocks.
2 boxes containing ten 75 mm. " "
2 boxes containing ten 6-inch " "
3 boxes of 12-inch torpedo heads.
14 boxes of 15-inch " "
1 box containing charge for torpedo tube, and 5 torpedo directors, 1 box torpedo caps.
2 boxes containing two rear doors of above water torpedo tubes.

1 box containing two rear doors of submerged water torpedo tubes.
5 boxes containing ten 75 mm. gun sights.
2 boxes containing ten 6-inch gun sights and seven 47 mm. gun sights.
1 box containing 5 torpedo directors.
1 box proxsiline electric hand charges.
107 boxes rifle ammunition.
25 boxes Maxim ammunition.

(Signed) WM. CARLSON,
Harbour Master.

Harbour Master's Office,
Shanghai, 31st August, 1904.

Ammunition, Parts of Machinery, etc., Removed from Russian Torpedo-boat Destroyer Grozovoi.

Torpedo Detonators: 4 brass tubes.
4 boxes torpedo charges. 22-200 grs. 1 box 2 short.
5 boxes torpedo charges. 47-95 grs. 1 box 1 short.
1 box containing four torpedo caps.
1 box containing 8 small pieces gun-cotton.
22 small tins calcium lights.
2 rear doors of torpedo tubes.
1 box large brass rocket tubes.
2 tins of rockets.
1 bundle of ten rockets.
2 tins white flares: 1 open.
7 boxes rifle ammunition: 2 open: 1 with 13 packets (130 rounds) short.
20 rifles and bayonets: 1 cleaning-rod short.
1 box containing 6 breech blocks—one 75 mm. and five 47 mm., also 6 gun sights and 6 spare back sights.
2 boxes each containing 1 torpedo director.
Shells:

75 mm.	97 steel	
	68 iron	
	165	
47 mm.	95 boxes steel	
	43 boxes iron	
	5 boxes saluting charges	
	143	3 boxes

Machinery: From Each Engine: Forward and After.

One length of main steam pipe.
High pressure piston valve.
High pressure piston valve spindle.
High pressure piston valve spindle connecting rod.
High pressure piston valve casing covers.
Low pressure piston valve casing covers.

Also:

One length of substitute steam pipe, common to both engines.

(Signed) WM. CARLSON,
Harbour Master.

Concerning the crew, the Imperial Government required as contained in the following:

In view of the crews of the *Variag* and the *Mandjur* apparently retaking arms in spite of parole, the repatriation of the crew cannot be consented to, for it promotes in fact the Russian fighting capacity. So Japan's determination was to have all crews of fugitive war vessels disarmed at neutral ports interned within the respective neutral territories until the end of the present war, and we had hoped that the Chinese Government also would reject the Russian proposal, now that the British and German Government had acted in accordance with Japan's desire.

Subsequently, the Chinese Tao-tai sent in a proposal to intern the Russian crews on board the disarmed vessels, surveilled by Chinese men-of-war stationed by them, to which the Japanese Government gave a positive reply.

Later on two Russian officers applied for repatriation. The Japanese Government, however, replied in the negative.

Afterwards there was found the following article concerning the commander of the *Askold*:

The Shanghai correspondent of the *Jiji*, wiring under date of the 2nd inst., states that Rear-Admiral Reitzenstein, of the Russina cruiser *Askold*, who is now at Shanghai under the charge of the Chinese authorities, has applied to the latter, through the Russian Consul, for permission to return home on account of illness. The application was, however, rejected, on the ground that the Russian officer was present

at a dinner given by the Italian Consul a few days ago at Shanghai and was then in good health.

III. *The Bodri and the Russian Transports Belonging to the Baltic Fleet.*

At the end of May, 1905, the Russian colliers and other vessels on special services, having separated from the Baltic Fleet, entered Woosung. They were as follows:

The *Korea*, the *Meteor*, and the *Svir*, special service boats.

The *Kuronia*, the *Livonia*, transports.

The *Vladimir*, the *Yaroslav*, the *Veroneji*, belonging to the Volunteer Fleet.

The following column appeared in the Shanghai paper concerning the above-named vessels:

A representative of the Shanghai *Daily Press* proceeded to Woosung on the 26th ult. and had a look at the Russian colliers. They were anchored some little distance beyond the red buoy, and looked very clean and smart, with the exception of the *Yaroslav*, a vessel which carries the senior Russian officer on board. She is painted white but looks dirty and in need of an overhaul. On her decks could be seen several loading pontoons and she was crowded with men, as indeed were all of them. None of the vessels flew any flags. The other vessels, *viz.*, the *Vladimir*, *Livonia*, *Meteor*, *Koronia*, and *Silvonia*, the last named being ordinary transports and the former, vessels of the Volunteer Fleet, were particularly clean, and the crowd of hands on board, who lined the sides of the ships at the approach of the launch, suggested the presence of a large number of naval reserve men, although the majority of them on some vessels appeared to be Germans, and on others, Frenchmen. The two Chinese cruisers, the *Haichi* and *Haichee* were the only other vessels in port, and a glance at them was sufficient to show that intense anxiety prevailed on board. At 4.30 p.m. two Chinese officers, looking very smart in their neat uniforms, entered a pinnace and were conveyed to the *Yaroslav*, where the commanding officer met them at the gangway and ceremonial salutes were exchanged. Disappearing on board, no sign of them was seen for about an hour, when they hurriedly left the transport and returned to their own vessel, as though in very perturbed frames of mind. Signals were then passed from the Chinese cruisers to the fort. After a brief spell an answering signal was given, and it was seen that the Chinese cruisers were cleared for action.

No notice was taken of the launch, and if such had been the intention of those on board, anything could have been conveyed to the transports. The Russian vessels were fairly deep in the water but an expert gave the opinion that many hundred tons more could be carried by each vessel.

On the 27th of May, 1905, Mr. Odagiri, Japanese Consul-General at Shanghai, requested the Chinese Government to take proper measures.[1] He said:

"As the Russian colliers and other vessel on special service, belonging to the Baltic Fleet, are to be deemed as the part of the said fleet, they must leave within 24 hours or must be disarmed, according to Art. V. of the Chinese Neutrality Regulation."

After a few days Mr. Odagiri received the following communication from the Shanghai Taotai:

On the evening of June 2, the Russian Consul at Shanghai consented to the detention by China of the Russian vessels at Woosung, which should be treated as transports. The Chinese naval authorities, therefore, in consultation with the Chief of the Harbour Office, decided to detain two of the Russian vessels inside the bar at Woosung, and the rest in the port of Shanghai. After their removal to the appointed anchorages, the machinery will be dismantled, and a written assurance be obtained from the Russian Consul to the effect that these vessels shall neither participate in warlike operations nor freely leave Shanghai during the war.

On the 4th of June the *Bodri* entered Shanghai harbour, and on the 12th of June the *Korea* entered the Cosmopolitan Dock, the *Meteor* the International Dock, while the *Kuronia* and *Livonia* anchored by the Chau-shan-kiuk pier.

As to the crews of these vessels, they were interned in the respective vessels.

After the restoration of peace, the *Mandjur*, *Grozovoi*, *Askold*, and *Svir* returned to Vladivostock the middle of Nov.; the *Meteor* to Odessa on the 27th of Oct., and the *Livonia* to Libau on 2nd Nov.

[1] *Japan Times*, June 10, 1905.

Sect. II. Russian Warships in Chefoo.

I. *The Ryeshitelni Incident.*

The Official Report.[1]

"On the night of August 10, while cruising in search of the dispersed Russian Squadron, our destroyers *Asashiwo* and *Kasumi* sighted one apparently Russian destroyer steaming at full speed westward and immediately pursued her, but she disappeared in the darkness. Continuing the search the next morning, they found that the enemy's destroyer had fled to Chefoo. They remained outside territorial water till night, vainly expecting her coming out. Then they entered Chefoo and found that the enemy's destroyer was the *Ryeshitelni*, and that there was no sign of her being disarmed. Accordingly Lieutenant Terashima was sent on board and offered the Russian Commander the alternative, to either leave port before dawn or to surrender. The latter accepted neither, and while discussing proceedings, ordered his men to destroy the engines and to fire. Then suddenly taking Terashima in his arms he jumped overboard. Another Russian also jumped into the sea with a Japanese interpreter. Then the other Russians commenced hostilities. Meanwhile the magazine of the *Ryeshitelni* exploded, causing casualties among the Japanese men. Thereupon the *Ryeshitelni* was captured and towed out. Japanese casualties were 1 killed, 14 wounded.

Admiral Togo's Report.[2]

(Received in Tokyo on August 15.)

According to the report from Commander Fujimoto, Commander of the First Torpedo-destroyer Flotilla, regarding the capture of the Russian destroyer *Ryeshitelni* at Chefoo, the Japanese destroyers *Asashiwo* and *Kasumi*, under the command of Commander Fujimoto, were searching for the enemy's warships on the night of the 10th inst. when one of the latter was sighted steaming westward. Our destroyers at once pursued the enemy, but the latter disappeared from view in the darkness of the night. A further search the following day (the 11th inst.) revealed the fact that the enemy's vessel had taken refuge in Chefoo harbour. Our destroyers accordingly remained outside the neutral zone, and waited for the Russian warship; but the enemy did not come out from the harbour.

On entering the port on the night of the 11th inst., our destroyers ascertained that the enemy's warship was the destroyer *Ryeshitelni*. It was also found that she had not been disarmed, but had taken in coal, all the officers and men remaining on board. At 3 p.m. on

[1] *Foreign Relations*, 1904, pp. 424–425. [2] *Japan Times*, August 16, 1904.

the 12th inst., Lieutenant Terajima of the *Asashio*, accompanied by ten petty officers and men, was despatched on board the enemy's destroyer, for the purpose of informing the captain of the Russian destroyer that our vessels had traced and watched him, and that, as he had entered the harbour at 4 a.m. the previous day and had not yet left it, he was offered an alternative either to issue from the harbour in one hour or surrender, the refusal of which would result in our disposal of the Russian destroyer at our will. The enemy, however, not only refused our demand, under various pretexts, but inflicted outrages by force on our officers and men. All of the Russians then jumped into the sea, meanwhile blowing up the fore part of the ship, whereupon we at once captured the destroyer and left the harbour at 5.15 a.m. with the vessel in tow. A Russian on board was taken prisoner.

By that time the captain of the Russian destroyer *Ryeshitelni*, which was captured by our destroyers at Chefoo, is reported to have sent to the Czar the following telegram from that port:

"The destroyer *Ryeshitelni*, charged with the important mission of forwarding despatches from Port Arthur, had arrived at Chefoo after passing the double lines of the Japanese blockade. In compliance with instructions from Admiral Grigorovitch, I disarmed the destroyer, pulled down our flag, and carried out all the necessary measures.

"While at anchor at this port during the night of the 11th inst., we received a piratical attack from the Japanese. The latter, with two torpedo boats and one cruiser, approached the *Ryeshitelni* and despatched to us a body of bluejackets under the command of an officer, with the apparent intention of opening negotiations. Having no arms to resist them, I ordered preparations to be made for blowing up the *Ryeshitelni*. On the Japanese attempting to hoist their own flag over our destroyer, I struck the Japanese officer and threw him overboard. I also ordered our men to throw the enemy's bluejackets into the water. But we were not strong enough to repulse them, and our destroyer was finally seized by the enemy. An explosion took place at the engine room and in the bow of the ship, but the ship itself did not sink and she was taken outside the port by the Japanese. One engineer, one stoker, and 4 others were slightly wounded. I myself was wounded in the right thigh."

Being ignorant of the true circumstances under which the unexpected incident occurred, general opinion, wrought up by

seductive Russian reports, was for a while rather severe towards Japan. Some blamed the Japanese conduct on the ground that the Japanese warship made an attack upon an enemy vessel already disarmed, though the *Ryeshitelni* had not yet fully undergone disarmament. Similar misunderstanding seems to have so much affected even the sympathetic neighbours of Japan.

To rectify a misunderstanding so harmful to Japan's cause, the Japanese Government set about investigating the real circumstances in relation to the disarmament of the *Ryeshitelni*.

The following report made by a member of the consulate at Chefoo, who visited Mr. Sa, the Chinese Commodore, and the captain of the *Haiti*, is quite noteworthy, and it deserves to be mentioned in justifying the Japanese action against the Russian destroyer:

At 4 p.m. on the day when the *Ryeshitelni* entered this port, I privately visited Commodore Sa on board the *Haiti* with Consul Midzuno, and asked him of the steps he had taken regarding the entry of the Russian destroyer. The Commodore replied that the Russian Commander having shown his willingness to disarm his ship and to give pledge that all of the crew should no more partake in the war, the Captain of the *Haijung* was sent on board the *Ryeshitelni* at 3 p.m. to inspect the disarmament, which, the Commodore stated in reply to my inquiry, consisted in removing

(1) breech-lock of guns,
(2) blades of the propeller of fish torpedo and
(3) essential parts of the engines.

Upon my asking him what necessitated the Russian destroyer taking on 60 tons of English coal, the Commodore stated that he had no knowledge of it. I then asked him how the arms and ammunition were to be dealt with. He replied that these would be taken, and stored within the Eastern Fort, but that owing to the heat, only a portion of them would be landed at present. Regarding the fish torpedo, he asked my opinion about the idea of letting it remain, removing only the blades of the propeller. As to the engine, he replied that no definite arrangement had been made for its removal, and that he would propose leaving the matter at the disposal of the Russian Commander. Not only was his way of dealing with the question indifferent and unsatisfactory, but there was practically no sign of ef-

fective steps being taken towards disarming the Russian ship. That the whole of the ammunition had been left without being landed and that the disarmament had not been effected before the capture, is shown by the fact that when Lieutenant Terashima boarded the ship, the Russian Commander in the course of the discussion ordered his men to be ready to fire the magazine, and that the explosion did actually take place, causing casualties among our crew.

At that time, Count Lamsdorff, the Russian Foreign Minister, had requested the French Government to lodge a strong protest, through the French Minister at Tokyo, on behalf of Russia against the breach of China's neutrality in connection with the *Ryeshitelni* Incident.

The Russian protest was, however, at once rejected by a letter in the following sense:

(1) Having in view the existence of a state of war between Japan and Russia, the Imperial Government finds it impossible to give any consideration to the protest of the government of Russia.

(2) But in order to remove the false impression, the Japanese Government assures the French Minister that the statement of facts upon which the protest is based is wholly inaccurate, and that the action of Japan in the matter is entirely correct.

The author of this work appreciates the first of the above-mentioned reasonings, by which it may become clear that one of the belligerents has no power to protest against the other.

China in her turn demanded the restoration of the *Ryeshitelni*, and lodged a protest with the Japanese Government about the violation of her neutrality—really an expression of the unique Chinese diplomacy, which blames her benefactor without remembering what she owes.[1]

[1] The *Jiji's* Peking correspondent wires under date of August 17th, that the Chinese Minister to France reports to the Chinese Foreign Office that public opinion in France is exceedingly indignant over the *Ryeshitelni* affair.

M. Dubail, the French Minister, on the afternoon of the 16th inst., advised Prince Ching to assume a strong attitude in dealing with Japan in this connection.

Prince Ching the same afternoon forwarded a memorandum to Mr. Uchida, the Japanese Minister, demanding an explanation with regard to the breach of neutrality and requesting the return of the *Ryeshitelni*.

If the actual circumstances at that time are thought about, the Japanese Government has many reasons to be surprised by receiving such a communication from such a quarter as China. In fact, the Japanese Government engaged to respect the neutrality of China outside the region occupied by Russia so long as Russia did the same. This engagement carried with it as a necessary corollary the obligation on the part of China to exhaust every means in her power to compel obedience to her laws of neutrality. The *Ryeshitelni*, escaping from Port Arthur, sought in Chefoo an asylum which her home port no longer afforded her. She continued in that harbour for more than twenty-four hours without betraying the least intention of taking her departure. It is understood that the commander of the *Ryeshitelni* states that his ship was disarmed upon arrival in Chefoo. Even if that statement were in accordance with the facts, disarmament would not fulfil the requirement of China's neutrality regulations as officially communicated to the Japanese Government, since those regulations do not allow the alternative of disarmament instead of departure; but the statement is untrue. The *Ryeshitelni* was apparently fully armed and manned when visited by a Japanese naval officer early in the morning of the 12th inst. In thus entering and remaining in the port of Chefoo the *Ryeshitelni* was guilty of a breach of both spirit and letter of China's neutrality regulations. In this situation the clear duty rested upon China to see to it that her neutrality was respected, nor was she in a position to plead inability or lack of force to carry out that duty, for at the time two Chinese men-of-war were lying in the harbour of Chefoo. In the presence of this clear and distinct invasion of the neutrality of China by Russia and the failure of China to take any steps to prevent an infringement of her neutrality, the Japanese Government were fully justified in adopting such measures of self-protection as might seem necessary to them. They could not say that the unlawful acts of Russia and that the supineness of China, working together, should be permitted to operate to the preju-

dice of their rights and interests. It is not alone in the matter of the *Ryeshitelni* that there has been a violation of the neutrality of Chefoo. In installing a system of wireless telegraphy between Port Arthur and the Russian Consulate at Chefoo there was a no less flagrant disregard of China's neutrality, and notwithstanding the repeated protests of the Japanese Government, China permitted the system to continue in operation. The Japanese Government had every wish and intention to continue to respect the neutrality of China outside those regions occupied by Russia so long as Russia did the same. But it is hardly to be expected that they would allow their enemy to escape the consequences of the war by disregarding China's neutrality.

Therefore the Japanese Government rejected the Chinese request.

The following memorandum was distributed to fortify the action of Japan against any possible misunderstanding of facts:

The Capture of Ryeshitelni.

The status of China in the present struggle is wholly unique. Nearly all of the military operations are carried on within her borders. She is not a party to the conflict, nevertheless her territories are in part belligerent and in part neutral. That condition of things is, in contemplation of International Law, an anomaly, even a contradiction. In this case it is the creature of a special understanding to which the belligerents have given their adhesion.

With a view to limit the area of hostilities in the interest of foreign intercourse and general tranquillity in China, the Japanese Government engaged to respect the neutrality of China outside the regions actually involved in the war, provided Russia made a similar engagement and carried it out in good faith.

The Japanese Government considered that they were precluded by their engagement from occupying, or making use for warlike purposes of any kind, of the territory or ports of China outside the zone which was made the theatre of war, because it seemed to them that any such occupation or use would *ipso facto* convert the places thus occupied or used from neutral to belligerent territory. Equally it seemed to them that any such occupation or use of neutral Chinese territory or ports by Russian forces would give effect to the *proviso* of Japan's engagement and justify her in considering the territory or ports so occu-

pied or used, as belligerent. In other words, the Japanese Government holds that China's neutrality is imperfect and applicable only to those places which are not occupied by the armed forces of either belligerent, and that Russia cannot escape the consequences of unsuccessful war by moving her army or navy into those portions of China which, by arrangement, have been made conditionally neutral.

The *Ryeshitelni* escaped from Port Arthur, and sought in the harbour of Chefoo an asylum from attack which her home port had ceased to afford her. In taking that step she was guilty of a breach of the neutrality of China, as established by the agreement of the belligerents, and Japan was fully justified in regarding the harbour of Chefoo as belligerent, so far as the incident in question was concerned. With the termination of that incident the neutrality of the port revived. The action taken by Japan in Chefoo was the direct and natural consequence of Russia's disregard of her engagement. But it is not alone in this matter, nor alone in Chefoo, that Russia has flagrantly violated China's neutrality and ignored her own engagement. Shortly after the investment and isolation of Port Arthur, a system of wireless telegraphy was installed between the beleaguered fortress and the Russian Consulate at Chefoo. The system is still in operation, notwithstanding the repeated protests of the Japanese Government. At Shanghai, at the beginning of the war, the Russian gunboat *Mandjur*, in defiance of China's neutrality, remained in port for weeks after receiving notice to leave from the Chinese authorities. She finally, after long negotiations, consented to disarmament. Again, the Russian cruiser *Askold* and destroyer *Grozovoi* have now been in Shanghai for more than a week, and still refuse to leave or to disarm.

The Japanese Government has no intention of disregarding the neutrality of China so long as it is respected by Russia, but they cannot consent that Russian warships, as the result of broken engagement and violated neutrality, shall, unchallenged, find in the harbours of China a safe refuge from capture or destruction.

The statement of the commander of the *Ryeshitelni* that his ship was disarmed upon arrival in Chefoo is untrue. The vessel was fully armed and manned when visited by Lieutenant Terashima early on the morning of the 13th instant. But, in any event, disarmament would not fulfil the requirements of China's neutrality regulations, and it was for China, and not Russia, to decide whether the alternative of disarmament would be acceptable.

It has been suggested in many quarters that the present case may be compared with the case of the *Florida*, among others. But the Japanese Government draws a clear distinction between the two events. The neutrality of Brazil was perfect and unconditional, and the port

of Bahia was a long distance from the seat of war, whereas the neutrality of China is imperfect and conditional, and the port of Chefoo is in close proximity to the zone of military operations.

The reports of the Japanese and Russian officers who took part in the Chefoo incident agree that the *Ryeshitelni* was the aggressor, the first to commence the hostilities which resulted in the capture. That fact would, the Japanese Government believe, deprive Russia of any grounds for complaint, which she might possess if the lawfulness of the capture were otherwise in doubt. In this respect the present case resembles the cases of the American privateer *General Armstrong* and the British ship *The Anne*.

The case of the *Ryeshitelni* is in itself of trifling moment, but it involves a principle of paramount importance. Experience has shown that China will take no adequate steps to enforce her neutrality laws. If in these circumstances the *Ryeshitelni* could make Chefoo a harbour of refuge, then the great ships of the Russian Navy might do the same, and nothing would prevent those ships from issuing forth from their retreat to attack Japan. The necessity for guarding against such an eventuality was too commanding, too overwhelming, to permit the *Ryeshitelni* to stand as a precedent.

This incident will not in any way affect foreign commerce or disturb the general situation in China. It will merely serve as a notice to Russia that she must keep her engagements in the future.

The false impression entertained by the Powers regarding the affair seems to have been pacified by these successive explanations.

For the author's part, he firmly believes that the peculiar disposition of Chefoo amply justified the conduct of the Japanese, where the naval operations made it entirely impossible to deal with the *Ryeshitelni* in the same way as with the *Mandjur* at Shanghai, and that a belligerent is entitled by virtue of *jus angaria* to resort to a decisive measure with such an impotent neutral state as China.

II. *The Ratstoropny Affair.*

As a result of our rigorous enforcement of neutrality regulations upon the *Ryeshitelni*, Russian warships were not a little restrained from seeking a ready refuge at Chefoo.

In spite of that, on the eve of the fall of Port Arthur, the

Ratstoropny, urged by pressing circumstances, resorted thither, commissioned with an important communication, as in the case of the *Ryeshitelni*, and sank herself by explosion.

Particulars of the affair were as follows:

The following report from Chefoo, dated the 16th inst., was received at the Foreign Office:

"The Russian torpedo-boat destroyer *Ratstoropny* left Port Arthur, under sealed orders, with despatches, at 3 p.m., November 15th, and was pursued for a short time by the Japanese Fleet. She entered the port of Chefoo to-day at 7 a.m. A very heavy blizzard has visited this district since yesterday, and snow is falling so heavily that nothing can be seen at sea.

"After the landing of the crew of the Russian destroyer *Ratstoropny*, three distinct explosions were heard on board the vessel, and clouds of white smoke were also observed. It is suspected that the vessel has been blown up by the Russians themselves."

Another telegram, dated the 17th, 1 a.m., received in the same quarter, states:

"The *Ratstoropny* has been blown up. Her hull is submerged, the funnel showing one foot and the masts five feet above water."

The crew of the warship landed armed, as is seen from the following extract from a letter, dated at Chefoo, Nov. 16, 1904:

Many of the Russian crew landed, armed with muskets. The American Consul-General, the senior consul in this port, called the attention of the Russian Consul to the matter, prompted by the apprehension that it might disturb the public welfare.

Afterwards the following telegram was received at the Foreign Office:[1]

"The Chefoo Taotai has lodged the following demands with the Russian Consul concerning the Russian destroyer *Ratstoropny*:

"'1. That the arms and ammunition taken by the crew of the *Ratstoropny* when they landed shall be handed over to the Chinese authorities.

"'2. That all the officers and men from the said destroyer shall be detained on board the Chinese cruiser *Haiyung*.

"'3. That the arms and ammunition referred to in clause 1 shall also be placed in charge of the *Haiyung*.

[1] The *Japan Times*, November 25, 1904.

"'4. That the Russian officers and men, on embarking on the *Haiyung*, shall take the customary oath.'

"All the above provisions have been accepted by the Russian Consul, and were to have been carried out during the night of the 17th.

"The *Ratstoropny*, which was blown up within the anchorage for merchantmen, has so far been left alone, only a small number of sentinels detailed from the *Haiyung* patrolling the neighbourhood on board a steel lighter. A red light is also displayed on one of the masts of the sunken vessel."

The crew of the *Ratstoropny* was sent to Shanghai, where they were interned.

Later on the report was sent in that the crew of the Russian destroyer *Ratstoropny* had arrived at Shanghai from Chefoo by the Chinese cruiser *Haiyung* on the evening of November 25.

Although the said warship sank, it was decided to forward her crew to Shanghai. The following memorandum was sent to the Chinese Government to provide for the future:

Memorandum.

According to information sent in by Japanese Consul Midzuno at Chefoo and other sources, the Russian warship *Ratstoropny*, which entered the said port, ventured to conduct itself as stated below:

1. The Russian torpedo destroyer *Ratstoropny* entered Chefoo on the 16th inst., carrying under a sealed order a secret communication, and her commander at once betook himself to the Russian Consul, where he had the said communication forwarded to his Government, thus making Chefoo a base of martial communication.

2. Some of the bluejackets of the said torpedo destroyer, who landed the same night, were carrying muskets, so that the Chinese Government tacitly permitted a part of the belligerent combatants with their arms to enter her own territory.

3. Notwithstanding the official communication sent to the Japanese Consul Midzuno the same afternoon, in which was contained the Russian Consul's notification to the effect that the commander of the *Ratstoropny*, which entered the port owing to stormy weather, had decided to disarm the ship and put it in custody of the Chinese authorities, the Chinese Government suffered the warship to destroy herself the same night within the harbour allotted for the anchorage of merchantmen, to the considerable impediment of international commerce.

From these facts the conclusion may be naturally drawn that neutrality regulations are not sufficiently observed in Chefoo, and it is deemed proper on this occasion to accordingly admonish the Chinese Government so as to facilitate Japan's martial operations in the future.

Dated November, 1904.

III. *Russian Warships Which Escaped into Chefoo Harbour after the Fall of Port Arthur.*

Dated June 2, 1905, the following report was sent in:

The names of the Russian warships which came into this port are as follows: The *Skori*, the *Statni*, the *Vlastni*, the *Serditi*. The ships are painted in war colours.

Accordingly, the Imperial Government demanded that Mr. Torai take proper steps immediately against the crews of the Russian men-of-war in refuge in Chefoo, otherwise Japan should be compelled to take necessary measures in self-defence.

According to Japan's desire, the disarmament was set about, breech blocks and torpedo discharges were dislocated, and ammunition shells and torpedo-tightening heads removed. The crews also were interned on board.

Sect. III. Russian Warships at Kiaochow.

When the Powers' attitudes were minutely studied in connection with the flight of Russian warships into neutral ports, the author's conviction is, that the strictest and most impartial observer of the obligations which International Law enforces on neutrals will be found to be the German Government; so that Germany is really entitled to share with Japan the credit for adding to International Law the new principles that a belligerent warship, upon entering a neutral port, shall depart within 24 hours, and if unable to do so, shall be disarmed, and the crew on board either detained there, or released on parole.

A similar opinion by the author's colleague, Professor Liszt, came to notice, which afforded great satisfaction.

Germany's Neutrality.

The well-known professor of public law, Franz von Liszt, states, in an article in the *Deutsche Juristen Zeitung* (German Law Gazette),

that the German Chancellor has brought into force at Tsingtao exactly what Liszt has hitherto considered as the correct interpretation of International Law.

After the memorable naval engagement of August 10, 1904, six Russian warships—*Tzesarevitch*, *Novik*, *Bezposhchadni*, *Bezstrachni*, *Bezschumni*, and *Boiki*—fled into Kiaochow. Later, on January 2, 1905, when approaching Port Arthur, the *Smyeli* took flight into the same port.

Below are inserted particulars concerning the more important of these warships.

The first telegraphic report containing details was as follows:

The *Asahi* publishes a detailed account, prepared by its correspondent at Kiaochow, of the flight into that port of the Russian war vessels after the recent naval engagement off Port Arthur. We reproduce the following from his story:

"At 4.30 p.m. on the 11th inst., a signal was received from the signal station that Russian warships were arriving. Presently the Russian torpedo boat (? destroyer) *Bezschumni* entered the harbour, being followed by the cruiser *Novik*, while the battleship *Tzesarevitch* arrived at about 7.30 p.m. Owing to the darkness, the latter vessel could not be identified at the time of her arrival, and was supposed to be the *Askold* by the Germans and other foreigners at the port.

During the same night the *Novik* was supplied with coal by the British steamer *Whig* (?), which had been staying at Kiaochow during the past six or seven days. This steamer had originally been destined for Port Arthur, with coal for the Russian Squadron there, but could not reach her destination. Throughout the night the *Novik* took in coal, sufficient, according to a German, to enable her to proceed not only to any near port, but to any distant place she might select. The vessel left Kiaochow at 5.30 a.m. on the 12th, and two Russian torpedo boats arrived at about 10 a.m. the same day.

The Japanese war vessels were expected by the Germans on the 12th, but when the former did not arrive at Kiaochow during the day, two gunboats were placed outside the harbour to provide against any emergency during the night. . . .

The *Tzesarevitch* had her foremast carried away and had a very big hole on her aft funnel. In addition, her bridge was riddled, the engines were rendered useless, and the rudder was destroyed. The vessel was also damaged at three places below the water line, which necessitated

the constant working of the pumps. It was only because the vessel was a twin-screw one that she was able to forge ahead, though at the low speed of five knots an hour. During the engagement of the 10th inst. the Japanese shell fire was concentrated on the bridge of the *Tzesarevitch*. The Commander-in-Chief of the Russian Squadron and the captain of the vessel were watching the fight from the bridge, when a shell struck near them and both were killed instantaneously. The Assistant Commander-in-Chief was also wounded at the same time. All the officers of the *Tzesarevitch*, with the exception of a few, were either killed or wounded in the engagement.

Thereupon, the Japanese Minister at Berlin saw the Acting Minister for Foreign Affairs on August 12th. He was assured that the German Government, in accordance with their neutrality, would not delay in taking proper measures in the matter, but would telegraph necessary instructions to the Governor. He then said that he was surprised that the Russian cruisers should have escaped the Japanese Fleet and entered Kiaochow, and hoped that German authorities there would make no mistakes in dealing with the affair.

It is reported that instructions by the German Government were sent to the Governor of Kiaochow in the following sense:

Any belligerent ship entering the port shall be allowed to take on coal, so as to enable her to reach the next nearest home port, but she must leave harbour within 24 hours from the time of her entry, and should such ship be unable to do so, then a further period of 24 hours will be allowed. Should any ship refuse to leave within the specified time, then she shall be disarmed and kept in charge by the authorities.

On the 16th of August, 1905, the Russian warships were disarmed at Kiaochow.

By that time, a report having been sent in that a Russian torpedo boat, which had once left there, had again entered the port, the Japanese Government instructed Minister Inouye to refer the matter to the German Government, which sent to him the following reply:

German marine officers at Tsingtao have strict instructions as to their duties for the maintenance of absolute neutrality. They know

especially that they must not allow Tsingtao to be made a naval base by either of the belligerents, and that consequently a re-entrance of Russian ships into that port is inadmissible. This being so, the highest marine administrative authorities at home refuse to give credit to the report that a Russian torpedo destroyer had re-entered the port."

On the occasion of disarmament, the following official document was issued by the Governor at Tsing-tao:

Auf Befehl S. Majestat des Kaisers sind die in Hafen von Tsingtan liegenden 4 Russische Kriegschiffe (*Limenschiff, Czarevitsch,* und drei torpedoboate) heute entraffnet worden.

Es wird darauf hingewieren dass die vorlanfig auf den Schiffen verbleibende Russische Besatzung als intermiert gilt und sich an Kriegsaperationen nicht beteiligen darf und dass das Publikum ihr zu Reinen gegen die Neutralitaet verstossenden Handlung vorschub lasten darf.

Tsingtao, den 15 ten August, 1904.

Der Kaiserliche Gouverneur Truppel.

Acting under instructions from his Government, the German Minister on August 23rd inquired of the Japanese Government if they had any objection to the release of the crews of the Russian fugitive warships, then at Tsing-tao, on parole, and with the Russian pledge that the released should not engage in any warlike affair till the end of the present war, since the German Government had considerable difficulty in detaining the said crew in that locality, or anywhere in the German territory.

Thereupon, the naval authorities having been consulted, Baron Komura replied to the German Minister as follows:

"As for the Russian warships which escaped and entered neutral ports after the naval engagement of August 19th, and are to be disarmed there, the Japanese authorities intend to notify the Powers concerned, that their request is to have the crews detained in the respective neutral territories as long as the war lasts, so as not to afford the enemy any additional reinforcements. And now that the British and Chinese Governments have already agreed to Japan's request, the proposal sent

in by the German Minister must, though unwillingly, be dissented to."

The German Government then renewed its negotiations for the exchange of prisoners of war, for a certain number of Japanese, who, according to the German report, were detained in Russia as prisoners of war, adding that if the said exchange could not be carried out, the Russian officers and bluejackets might be, with our consent, transmitted from Tsing-tao to some locality in the German territory.

The German Government seems to have been thus anxious to get rid of the Russian fugitives because, being almost equal in number to the German garrison stationed there, they might prove intractable.

On September 5th the German Government decided to keep the officers and men of the Russian men-of-war for the time at Kiaochow on board their ships, and perhaps in the winter they might be transported to a place in Germany.

The information concerning the Russian warships which escaped after the fall of Port Arthur was as follows:

On January 2nd, at 11 a.m., a steamship of 1300 tons came into Chingtan hoisting British flags, which twenty minutes later were changed for Russian merchantmen's flags. The said steamer was originally named *Bintau*, though a part of the name was erased soon after her arrival. She had a crew consisting entirely of Russians, which included 800 men in bluejackets' uniform, and was laden with cannons and ammunition. Two or three officers were actually seen landing.

Prior to the receiving of Japanese representations, which were at once despatched, the German Government issued appropriate instructions as regards the internment of the said vessel.

Thereupon the Japanese Minister to Germany expressed to the German Government the satisfaction with which the Japanese Imperial Government had learned how promptly and satisfactorily the German Government had taken proper steps concerning the Russian fugitive warship.

After the advent of peace, the five torpedo boats left for

Vladivostock in the morning of September 28th, and the *Tzesarevitch* for Saigon on November 11th.

Sect. IV. A Russian Warship at Manila.

Among the Russian Fleet, which was miserably discomfited at the memorable naval engagement of the Japan Sea, three cruisers, the *Aurora*, *Oleg*, and *Zamtchug*, managed to reach Manila on June 3rd.

Previously Japan had been furnished with the following report:

The Philippine Islands Constabulary have received a telegram to the effect that six men-of-war were sighted on the afternoon of June 2nd a few miles off Lingayen Gulf, and at 5.30 p.m. three entered the Port of Sual, Philippine Islands. They are the *Aurora*, *Zamtchug*, and *Oleg*.

On June 8, 1905, Mr. Wright replied that, acting under instructions from Washington, the Russian Admiral has been notified that he must leave this harbour within twenty-four hours, beginning at twelve o'clock noon of the 7th day of June, and that he might take on supplies and coal for the voyage to his nearest home port within that period. The Russian Admiral has been further advised that in the event he does not leave Manila harbour within the time named, his ships will be interned until the close of hostilities.

As soon as these Russian warships entered Manila, Admiral Enquist, accompanied by Admiral Train, called at Ayuntamiento and paid their respects to the chief executive.

The Admiral asked the Manila Government for permission to effect repairs to these vessels, which were unable to safely navigate, owing to their having been damaged. The special investigation committee appointed by the Manila Government subsequently reported that the repairs would take sixty days to execute.

The following is the correspondence between Japanese Consul Narita and the American authorities at Manila concerning this affair:

On the 6th of June, 1905, Mr. Narita wrote to Mr. Luke E. Wright, Governor-General of the Philippine Islands, to invite the Governor's attention to the fact that three Russian men-of-war, *Aurora*, *Zamtchug*, and *Oleg*, had been in Manila harbour since 10 p.m. of the 3rd of June, and requested to know what measures would be taken by him in regard to their disposition, the twenty-four hours limit having already passed.

Dated June 8, 1905, however, the following report was sent in:

> The prescribed period of 24 hours having expired, the Russian war vessels were put in custody of the Commander-in-Chief of the American Fleet. Nevertheless, as to disarmament, he is not authorised to carry it out until he hears further from his Government, for the instructions received by him were simply about the internment of the said vessels. And he himself finds no necessity of taking such a step.

After special investigation, the Japanese Imperial Government consented to compromise as follows, thus making the only exception to the principle held by her Government concerning the enemy's fugitive war vessels:

> "Our representative at Manila need make no further request as regards the disarmament of the warships in question, now that American authorities, on their own responsibility, have taken them in custody, with due provisions so as to prevent them from any hostile conduct."

After the restoration of peace the *Zamtchug* and the *Oleg* sailed homeward, the former on November 27th, 1905, and the latter on the 28th of the same month.

Sect. V. The Diana at Saigon.

After the naval engagement of August 10, 1904, the *Diana*, the Russian warship, succeeded in reaching Saigon.

It is reported that the cruiser which arrived at Saigon on August 24th called at Kwang-chou-wan on her way thither, where she took in enough coal to enable her to reach the nearest port. In the evening of August 20th she entered the Along

Bay, where several tons of coal were again taken in and a pilot hired, and departed within 24 hours, on the 8th of August.

The first question is whether the French Government failed in its neutrality obligation in twice supplying the *Diana* with coal.

A certain lawyer discussed at that time the present case as follows:

"According to international regulations observed by the Powers, England and the United States of America included, a belligerent war vessel is prohibited to take a second coal supply within an interval of at least three months. (In 1870, in the time of the Franco-German War, England, the United States, Spain, and Holland issued a declaration of a like purport, and in the present war England and two or three other states did the same.)

"Japan, also in her neutrality regulations, issued during the Spanish-American War, i.e., in the course of 1898 (Imperial Ordinance, No. 87, Art. VI.), declared that the second coaling was not permitted to a belligerent warship until full three months had expired after the first coaling.

"Now to turn to the French attitude. Explanations given by French authorities concerning their recently issued neutrality regulations are as follows:

"As much coal might be afforded as was absolutely necessary for reaching the next port, which according to French precedents, was not confined to the nearest home port. According to this explanation, France does not seem as yet to have any settled principle as to how many times the coaling may be allowed.

"If the enemy's war vessels, availing themselves of such a defect in the French regulations, procure coal repeatedly in a short space of time, Japan cannot be without much apprehension that such conduct will directly promote the enemy's martial operations, impeding at the same time her own efficiency."

The author's opinion is also that advice be given the French Government to establish for the future a certain limitation to the coaling of a belligerent vessel.

Sect. VI. The Sojourn of the Russian Auxiliary Cruiser Lena in the Harbour of San Francisco.

A telegram received at the Foreign Office says:[1]

The Russian auxiliary cruiser *Lena*, which arrived at San Francisco on September 11 from Vladivostock, is commanded by Lieutenant Berlinsky, and has an armament of 23 guns, with a crew of 504, including 16 officers. The cruiser left Vladivostock just a month ago, arriving at San Francisco via St. Mary and the Alshan archipelago. It is reported that her engines are greatly damaged and will take at least a month to repair. It is further reported that the Commander of the *Lena* states that whilst halfway across the Pacific he sighted three Russian warships, which were proceeding in an easterly direction.

The following are the documents concerning this incident:

Mr. Hay to Mr. Takahira.[2]

Department of State, Washington, May 5, 1904.

MY DEAR MR. MINISTER:

In a communication dated the 14th ult. the Secretary of the Navy enclosed a letter from the commandant of the Mare Island Navy-Yard, transmitting copies of circulars received in an envelope from the consulate-general of Japan at New York City, addressed "To the Japanese serving in the United States Navy," soliciting subscriptions to Japanese bonds, contributions to the relief fund for Japanese soldiers and sailors, and in aid of the Red Cross Society of Japan. In view of the President's proclamation of neutrality, the Secretary of the Navy asked whether the circulars should be forwarded.

While Japanese in the United States doubtless have a right to subscribe to Japanese bonds or to contribute to relief and Red Cross Society funds of Japan, yet it is undesirable that such contributions should be sought through the naval official channels of this Government.

Pursuant to these views, the commandant of the Mare Island Navy-Yard has been instructed not to forward to the Japanese serving in the United States any circulars of the character above described.

I now bring the matter to your attention, with the request that you will inform the consular officers of Japan in the United States of the attitude of this Government in the matter.

I am, etc.,

(Signed) JOHN HAY.

[1] The *Japan Times*, September 13, 1904. [2] *Foreign Relations*, 1904, pp. 427–430.

Mr. Takahira to Mr. Hay.

Legation of Japan, Washington, May 6, 1904.

MY DEAR MR. SECRETARY:

I beg to acknowledge the receipt of your note of the 5th instant with reference to the circulars sent from the Consulate-General of Japan at New York to the commandant of the Mare Island Navy-Yard and transmitting copies of circulars addressed "To the Japanese serving in the United States Navy," in which subscriptions to Japanese bonds, and contributions to relief funds for Japanese soldiers and sailors, and in aid of the Red Cross Society of Japan are solicited.

Noting what you say concerning the undesirability of forwarding such communications through naval official channels, I shall communicate with the Consul-General of Japan at New York upon the subject and give him the necessary instructions on the subject.

I am, etc.

(Signed) K. TAKAHIRA.

(Translation of the telegram received by the Japanese Minister from Baron Komura. Handed to Mr. Adee by Mr. Takahira, September 13, 1904.)

Mr. K. Uyeno, Japanese Consul at San Francisco, telegraphs that the Russian auxiliary cruiser *Lena*, with a crew of 500 men and armament of 27 quick-firing guns, has entered the harbour of San Francisco, the object of which is said to be for repairs to her boilers and engines.

You are hereby instructed to call the attention of the United States Government to the above fact as reported, and to say to the Secretary of State that the Imperial Government expects that appropriate measures regarding the matter will be taken by the United States Government without delay.

Mr. Adee to Mr. Takahira.

Department of State, Washington, September 15, 1904.

SIR:

I have the honour to advise you that the President has to-day, through this Department and the Department of the Navy, issued an order directing that the Russian armed transport *Lena*, which arrived in the harbour of San Francisco on the 11th instant, be taken in custody by the naval authorities of the United States and disarmed. The conditions prescribed by the President for disarmament are that the Russian vessel be taken to the Mare Island Navy Yard, and there disarmed by the removal of small guns, breech-blocks of large guns, small arms, ammunition and ordnance stores, and such other dismantlement as may be prescribed by the Commandant of the

Navy Yard; that the captain give a written guarantee that the *Lena* shall not leave San Francisco until peace shall have been concluded; that the officers and crew shall be paroled not to leave San Francisco until some other understanding as to their disposal may be reached between the Government of the United States and both the belligerents; that after disarmament the vessel may be removed to a private dock for such reasonable repairs as will make her seaworthy and preserve her in good condition during her detention; or may be repaired at the Navy Yard, if the Russian Commander should so elect; that, while at a private dock, the Commandant of the Navy Yard at Mare Island shall have custody of the ship and the repairs shall be overseen by an engineer officer to be detailed by the Commandant of the Navy Yard; and that, when so repaired, if peace shall not then have been concluded, the vessel shall be taken back to the Mare Island Navy Yard and be there held in custody until the end of the war. It is further to be understood that the cost of repairs, of private docking and of the maintenance of the ship and her officers and crew while in custody is to be borne by the Russian Government, but the berthing at Mare Island and the custody and surveillance of the vessel is to be borne by the United States.

The President has taken this action upon the written request of the commander of the *Lena*, addressed to the Rear Admiral, setting forth that, as the vessel is incapable of putting to sea without needful repairs, she must disarm, and asks that needful repairs be permitted after disarmament.

Be pleased to accept, sir, the renewed assurances of my highest consideration.

(Signed) ALVEY A. ADEE,
Acting Secretary of State.

Sect. VII. The Terek at Batavia.

In regard to the *Terek*, which survived the naval engagement on the Sea of Japan, and resorted to Batavia on June 29, 1905, the details are as follows:

The Russian auxiliary cruiser *Terek* came into the harbour of Batavia, Dutch India, on June 29th, and her commander applied to Dutch authorities for a supply of coal, provisions, etc., which application the Dutch Governor-General granted in so far as the stipulations of the neutrality regulations sanctioned. On being asked for more coal, the Governor-General gave absolute refusal, and they set about loading the said war-

ship with coal in full conformity with the spirit of the neutrality regulations, which was, however, found to take more than the period granted to a belligerent warship in a neutral port by the same regulations. The commander having declined to leave the port with so little coal, the disarmament of the warship was commenced on the expiration of 24 hours, the term prescribed by the neutrality regulations. The crew and officers were detained on board.

The following reports are given concerning Russian bluejackets left on land at Batavia:

The Russian Auxiliary Cruiser Lyon Calling at Batavia.

The Russian auxiliary cruiser *Lyon* came into the Port of Batavia at 8.30 a.m., on the 14th inst., and left within the period granted, after having been supplied with coal, provisions, drinking-water, etc., in conformity with the stipulations of the Dutch Neutrality Regulations. The said warship, as the commander said, stood aloof from the naval engagement of the Sea of Japan, and bore no trace of damage, not having met with the Japanese men-of-war. After she had left the port, two officers and sixty bluejackets were found remaining on land, who were accordingly put in detention by the Governor-General and are still detained. Although their delay is alleged to be due to illness, drunkenness seems really to be the cause. The said Russian crew detained at Batavia should be released on parole if they will not again betake themselves to arms.

CHAPTER II.

THE TREATMENT OF BELLIGERENTS IN NEUTRAL PORTS.

Sect. I. General Observations.

This subject may be discussed under various aspects, which may be classified as follows:

I. The case of the rescue of combatants by neutral ships or men-of-war when their warships are destroyed, as the *Variag* and *Koreetz*, which sank in the harbour of Chemulpo during the Russo-Japanese War. In such a case the following questions arise:

a. Where must the combatants be carried? Are they to be handed over to the victor, or are they to be taken to neutral States?

b. When they are taken to neutral States, are they to be interned or paroled?

c. Are they prisoners or not? And can we take them for shipwrecked men?

II. The treatment of combatants from warships when they are stranded in their escape or during an ordinary voyage without being destroyed in battle.

The best example is the Russian torpedo destroyer *Bruni*, which stranded outside the harbour of Wei-Haiwei, and whose officers and crew were rescued by a British warship.

III. The treatment of crews of belligerent warships staying in a port of a third Power when war suddenly broke out between their own and some other country, as the case of the *Mandjur*.

IV. The treatment of the crews of warships, such as the

Russian torpedo destroyers *Ryeshitelni* and *Rastoropny*, which escaped to a neutral port after their defeat in battle, and were scuttled there.

V. The case of the officers and crews of warships entering neutral ports after their defeat in battle, such as the *Tzesarevich* at Kiao-chow Bay, and the *Askold* at Shanghai, and the *Stratni* at Chefoo. Also when the neutral ports lie far beyond the zone of warlike operations, is it necessary to make distinctions; for example, the cases at Chefoo near the area of hostilities, from those of the *Lena* at San Francisco, and the *Diana* at Saigon, and the *Terek* at Batavia?

Thus various questions arise according to circumstances. The following table indicates the actual treatment during the Russo-Japanese war:

Names.	Treatment.
The *Variag.*	Scuttled by her own crew. Her officers and crew were carried to neutral territories and there paroled.
The *Mandjur.*	Disarmed at Shanghai. Her officers and crew were allowed to return to Russia on parole.
The *Diana, Lena,* and *Tzesarevitch.*	Disarmed; their officers and crews were interned in neutral territories.
The *Askold.*	Disarmed; her officers and crew were interned on board.
The *Bruni.*	Stranded. Detained at Hongkong.

As will be seen, the treatment received by the various vessels was not the same, but there are certain explanations for this.

At the beginning of the war the Japanese authorities looked upon the faithfulness and righteousness of the Russians with respect, and allowed officers and men to be paroled, but afterwards the captain of the *Mandjur* broke his parole, leaving Shanghai on board the British steamer *Nigretia.* Again the paroled officers and crew of the *Variag* almost all entered the naval service of their country. Such incredible actions on the part of the Russians practically proved that the parole is not reliable

for Russians, and it became necessary to intern belligerents in neutral ports during the continuance of the war. And as regards the method of internment, when the number of the interned surpasses that of the officers and crews of the warships guarding them and the ports, it becomes difficult to preserve the peace and security of the territories; therefore it was decided to put them not into one neutral port alone, but to separate them in the territories of neutral states, or to intern them in their own warships. Even when they were thus disposed of, there still occurred a case of murder in the *Askold*, which disturbed the tranquillity of the country in which the vessel was interned.

The opinion is that it is necessary to revise and amend the 10th Article of "Agreement for the Adaptation of Maritime Warfare to the Rules of the Geneva Convention, and to intern the combatants of warships of a belligerent state in one or more territories, or to intern them in their own warships, permitting them to disembark for short periods, in limited numbers.

In the case of the internment of the combatants in their own warships, it is natural that a transgressor should not be given an unusual immunity, and warships when they are disarmed lose their rights as warships. With regard to the officers and crews of the Russian warships at Shanghai, Chefoo, Saigon, San Francisco, and Kiao-chau Bay, no mention is here made, because of a like narration in the previous chapter.

As to the facts regarding the *Variag* at Chemulpo, and the *Bruni* at Wai-Haiwei, the Chemulpo incident presents many interesting questions involving "The treatment of the belligerents rescued by neutral ships," which have been discussed by Mr. Mahan at the First Peace Convention. However, it should be noted that these subjects do not belong to the proper sphere of the contents of this chapter, and a discussion here is merely subsidiary. With regard to the officers and crew of the *Bruni*, two views were taken; one deemed them as those being shipwrecked, others not so.

Sect. II. Chemulpo Incident.

First a description of the case of the *Variag* at Chemulpo, summarising the information given by M. Pavlow, the previous Russian Ambassador to Korea, may be of moment:

Feb. 9, 1904, at 7.30 a.m., the captains of the British cruiser *Talbot*, the French *Pascal*, the Italian *Elba* and the American *Vicksburg*, which were anchored in the harbour of Chemulpo, received from Admiral Uriu, the commander of a Japanese Squadron outside the harbour, public information that diplomatic relations were broken off between Japan and Russia, and advising the Russians to leave the harbour, telling them that if they did not, they would be attacked. Admiral Uriu requested the captains of the foreign warships to leave the harbour before 4 o'clock p.m. Thereupon the captains of the foreign warships held a consultation on board the *Pascal* and requested the presence of Captain Rudoniyoff, who also received public information bearing the same purport. As a result of these deliberations they determined to protest against Admiral Uriu's violation of the neutrality of the Korean port. They, however, informed the captain of the *Variag* that they would leave the port for their own safety, if the Russian warships did not vacate before 12 o'clock.

The captain of the *Variag*, however, determined to risk the chance of a lucky escape in case of an engagement with the Japanese Squadron, and steamed out against it about 5 miles off the Isle of Yodarimo at the mouth of the harbour. Just at 12 o'clock the *Asama*, the flagship of Admiral Uriu, opened the fire against the *Variag* and her consort *Koreetz*, which fought with the Japanese Fleet for about an hour. At 1 o'clock p.m., the Russian warships returned in a crippled condition and lay at anchor in the harbour to examine the damages and to repair them, hoping to again engage with the Japanese Squadron before 4 o'clock p.m. The *Koreetz* was seriously damaged, and crowded with wounded men, but her captain would not surrender his ship to the Japanese, and determined to blow her up and scuttle her, after sending her crew and wounded men on board the British, French and Italian warships. When at 4 o'clock the *Koreetz* exploded, the *Variag* remained undisturbed, but afterwards in accordance with the warning of the foreign captains that the explosion of the *Variag* would be dangerous to the neighbouring warships, her guns and engines were entirely destroyed, and she was set on fire.

The steamer *Sungari* of the Eastern China Railway and Maritime Company, which had entered the harbour on the night before these

events, also was destroyed by order of the captain of the *Koreetz*, the *Koreetz* having destroyed herself after sending her officers and crew on board the *Talbot*.

Thus three Russian vessels were sunk in one day. When, at the beginning of the incident, the *Variag* and *Koreetz* steamed out against the Japanese Squadron, the British, French and Italian warships and vessels deeply sympathised with them, and encouraged them, especially the Italian *Elba*, the band of which played in their honour as they sailed out. When they had returned to the harbour, the three foreign captains received the Russians on board their ships and treated them with kindness. The captain of the *Pascal* saw Commander Rudoniyo and his men on board the *Variag*. The captain of the United States gunboat *Vicksburg* proposed to assist the Russians by treating their wounded men, but informed them that he could not personally receive the Russian officers and men on board his ship without an order from his Government. The captain of the *Variag* refused the assistance of the American captain, and all the men of the Russian warships were taken on board the *Pascal*, *Talbot*, and *Elba*.

As to the questionable points with regard to the treatment of the crew after this event, the following communication was published by the Japanese Government:

1. "Survivors of the Russian warships and vessels must be taken to Shanghai."
2. "The Japanese Government found it necessary to make them pledge themselves not to come again to the north of Shanghai during the war."

Afterwards (Feb. 12th) the French Chargé d'Affaires in Korea telegraphed to the French Minister in Tokyo relative to the French warship *Guidon's* express voyage from Nagasaki to Chemulpo to carry the Russian survivors (except the severely wounded men) now on board the *Pascal* to Shanghai, according to the request of the Japanese Government. And he requested for her, if possible, a certain proof of her mission, lest the Japanese Fleet should detain her on her way to Chemulpo. The Japanese Government permitted it. The following, however, has been submitted as the opinion of the British Minister to Korea:

"It is very difficult to keep under strict control such a large number of survivors, as those of *Variag* and *Koreetz* at Shanghai."

After this we received the following communication from Keijo, Korea, dated Feb. 19th, 1904.

"With regard to the treatment of the survivors of the Russian warships at Chemulpo, it is declared that the survivors of the *Variag*, who were taken on board the British *Talbot* are to be interned in British territory during the continuance of the war, and that they are to be carried by the British warship *Amphitrite*, which is coming to Chemulpo to take them to British territory."

According to a copy of the list of the survivors of the Russian warships, which was signed by the captain of the *Talbot*, the total number of the crew of the *Variag* on board is 275, including her executive commander and officers. Besides these there are on board 53, including 15 Chinese from the *Sungari*. All these Russians are to be carried by the *Amphitrite* to Shanghai, and the British man-of-war has to intern the survivors of the *Variag* in Singapore or in India, but to land those of the *Sungari*, being properly non-combatants, at Shanghai or other Chinese ports.

Some Scientific Questions proposed by U. S. Naval College.

As we know, the United States Navy has come to pay profound attention to the study of International Law. The president of the Naval War College at Newport asked various questions about this incident.

Mr. Takahira to Baron Komura.

(A letter translated from the Japanese.)

June 8th, 1904.

MONSIEUR LE MINISTRE:

"I was requested by Mr. Rockhill to give a full account of Chemulpo incident to the president of the Naval War College at Newport, U. S. A., who entrusted Mr. Rockhill with a letter, given in the following page, to procure for him the facts with regard to the treatment of the rescued crews of the Russian warships by neutral war-vessels in the harbour of Chefoo.

"Since the beginning of the present war, it is said that professors and students of the college have been studying the actions and schemes of the navy with much interest. It is believed that they have no other purpose than that of purely a scientific study of the incident, and I hold that it is the best way to show a glimpse of the appli-

cations of Japan's naval strategy, to give a full account of the treatment of Chemulpo incident, and the specific answers to the questions. I shall be much delighted if Your Excellency will give me your detailed information about the incident."

(Enclosure.)

U. S. Naval War College, Gdc.,
Newport, Rhode Island, May 7, 1904.

MY DEAR ROCKHILL:

I shall be greatly obliged if you can and will procure for me from some of your friends in the Japanese Legation, the facts in relation to the disposition made of the crews rescued by neutral war vessels from the Russian warships, when they were abandoned and sunk in the harbour of Chemulpo last February. I should like to get, specifically, answers to the following:

(*a*) Was any demand made by the Japanese Admiral for the surrender to him of the rescued Russians?

(*b*) Were the crews considered to have been interned by the neutral commanders who received them in the manner prescribed by Art. LVII. of the Hague Convention, July 29, 1899?

(*c*) The Russians having been permitted to return to Russia, it is assumed that their parole was taken, and if so, to whom was this parole given?

Answers to the questions were as follows:

(*a*) With regard to the Russian survivors rescued by neutrals from the *Variag* and *Koreetz*, which were sunk in the harbour of Chemulpo, the Japanese Admiral made no demand for their surrender.

(*b* & *c*) The survivors of the said warships, when sunk in Chemulpo harbour, were kept for days, on board the French *Pascal*, the British *Talbot* and the Italian *Elba*, but afterwards the French, British and Italian representatives in Korea conducted negotiations with the Japanese Minister to Söul, in regard to the disposal of survivors, and the Japanese Government assented to their proposals on the following conditions:

(1) Survivors shall be taken to Shanghai.

(2) The Russian Government has to make them pledge themselves not to come again to the north of Shanghai.

Thereupon the representative of the French Government certified by a public document that the Russians on board the *Pascal* should not be handed over to any other authority

unless her captain would get their parole that they would not take part again in hostilities; and then he handed over to our ambassador a list of the rescued Russians, signed by the captain of the *Pascal*, and was allowed to start for Shanghai, carrying 8 officers and 39 sailors of the *Variag* and 9 officers and 160 sailors of the *Koreetz*. The representative of the British Government also by an official document certified that the Russian sailors brought on board the *Talbot* should be interned in British territories during the war, and handed to the Japanese Minister a list of the Russians, which was signed by the captain of the warship in the same document, and the *Amphitrite* was allowed to carry the Russians, including the executive commander of the *Variag* and his men, to Hongkong.

The Italian Minister certified by an official document how he would dispose of the survivors of the *Variag*, getting the instructions of his Government after sending them to Shanghai, and handed over to the Japanese Minister the document with a list of the Russian survivors, and sent seven officers and one hundred and ninety-four sailors of the *Variag* by the *Elba* to Shanghai.

Dr. Lawrence criticised the protest of the three captains of the British, Italian, and French warships in the harbour of Chemulpo.[1] He said:

"The naval officer is often combatant, peacemaker, diplomatist, judge, and avenger in one. If he finds himself suddenly confronted with an outbreak of what seems to him unlawful hostilities, in the course of which the lives and property of his country's subjects are in imminent danger, and it is his duty to afford them protection by every means in his power. And if among such means he includes a timely protest against the carrying on of warlike operations in a neutral harbour, he would be well within his right in making it. But in the case before us there was no danger threatening British, French and Italian subjects or their possessions. There was no ground for the protest . . ."

The author of the present work has the same view with his learned friend in Cambridge, England.

[1] Lawrence, *War and Neutrality in the Far East*, pp. 75–80.

Sect. III. The Breach of Parole by the Russian Officers.

Most of the Russian officers who were set free under pledge in neutral territories again took service in their navy. Japanese authorities received the following information at intervals between the months of April and August:

"It is probably certain that the captain of the Russian gunboat *Mandjur* was drowned on board the *Petroparlovsk* when she sank outside of Port Arthur. The officers of the *Mandjur*, when disarmed, it is said, pledged themselves, in the presence of the Chinese authorities, not to take part again in hostilities during the war. It was proved by General Decins that Captain Crown was drowned on board the *Petroparlovsk*.

"According to the Cronstadt correspondent of the London *Times*, the Russian naval reserves have entered the service by Imperial command.

"Three thousand eight hundred and eighty-eight men were assigned to warships in Cronstadt harbour, and the remainder were assigned to the docks. An officer of the *Koreetz* stated that both officers and men of the *Koreetz* and the *Variag* had taken service again."

These simple statements are not sufficient to draw the reader's attention, so the author will narrate an interesting case.

The Nigretia Affair.

I have already stated that the officers of the *Rastoropny*, *Grozovoi*, and other warships were set free on parole, but on the 16th of December, 1904, the following information came from Shanghai:

The British steamer *Nigretia* is reported to have left here for Vladivostock to-day with a contractor for the Russian Army, and also with several of the Russian officers secretly escaping from the Russian men-of-war in this port, including the captain of *Grozovoi*. She is proceeding directly to Vladivostock via Strait of Korea. The cargo as shown by her bill of lading is kerosene, but the circumstances looked very suspicious.

On the 19th of December, 1904, the British steamer *Nigretia*, which left Shanghai on the 17th of December, and

which was on her way to Vladivostock, was captured by H. M. S. *Tsushima* for carrying coal. On board the ship there were two passengers who called themselves Germans, and who, however, confessed that they were respectively the captain and officer of the *Ratstoropny*.

Hence our government ordered Mr. Matsui at Peking to advise the Chinese authorities to more strictly supervise the Russian officers. The principal meaning of the letter written by Mr. Matsui, the Japanese Ambassador in charge at Peking, on the 21st of January, 1905, to Prince Ching is as follows:

"Paul Mihairovich Plem, the captain of the Russian torpedo-destroyer *Ratstoropny*, and sub-lieutenant Clergy Wallen-chi-novich Sekyoff attempted to escape into Vladivostock by the British steamer *Nigretia*, which put off from the port of Shanghai on the 16th of December, 1904, but unfortunately for them, was captured by the Japanese warship *Tsushima* far off the coast of Urusan, and was brought to the Prize Court at Sasebo. They confessed the fact at a solemn trial.

"Formerly when the captain of the *Ryeshitelni* escaped from the Japanese internment, Mr. Uchida, the Japanese Ambassador at Peking, following instructions from the Japanese Government, communicated to your Government relative to the disposition of him, and on your future treatment of the Russians; and your Government consented to his proposals on the 10th of September, 1904. But I believe the present event must have arisen from the imperfectness of your internment of the Russians, therefore, I must advise Your Excellency to put them under strict guard, and not to repeat such a troublesome occurrence." (Translated from Japanese.)

Now, to the great surprise of all, there came on the 15th of May, 1905, the following note from the French Minister at Peking, who informed the Japanese authorities that the captain of the *Ratstoropny* and some others insisted that they had never broken their parole:

Le lieutenant de vaisseau Plenn, actuallement prisonnier de guerre a Matsuyama, vient de m'adresser une requete en vue d'obtenir sa liberation, en faisant valoir les raisons suivantes.

Il commandait le torpilleur *Ratstoropny* et apres l'arrivée de ce navire a Tchefou, il dut signer, devant les autorités Chinoises, ainsi que ses officiers et son equipage, l'engegement de ne plus prendre part a la guerre actuelle. Mais cet engagement ne stipulait aucune obligation de residence dans telle ou telle ville determinee, fait dont j'ai eu depuis lors confirmation par un avis officiel du Ministre de France a Peking.

Un officier et l'equipage du *Ratstoropny* sont restés a Shanghai, tandis que le lieutenant de vaisseau Plenn et l'enseigne Cheveleff se sont embarques a bord du steamer *Nigretia* dans l'intention de se rendre a Vladivostock et de demander a leur admiral la permission de rentrer en Russie.

Le *Nigretia* fut capturé par la Flotte Japonaise, et MM. Plenn et Cheveleff, qui se trouvaient a bord sous des noms d'emprunt, ont été internes comme prisonniers de guerre. Bien que, peu de temps après, ils aient fait connaitre leur veritable état civil, ainsi que les termes de l'engagement souscrit, ils ont été maintenus depuis quatre mois au Japon.

Ils demandent donc leur liberation, en se basant sur le fait qu'ils n'ont eu aucune façon viole leur serment, qu'ils n'étaient astreints à aucune residence determinée, et que par suite ils avaient le droit de se rendre a Vladivostock.

Je ne puis que transmettre a Votre Excellence la requete dont ils s'agit. 1.

The Japanese Imperial Government soon ordered Consul Mizuno at Chefoo to find out the copy of the affidavit made by the captain of the *Ratstoropny*.

The answer of Mr. Midzuno by a letter on the following morning is as follows:

The Case Referring to the Affidavit Made by the Officers and Crew of the Russian Torpedo-Destroyer Ratstoropny.

The affidavit made by the officers and crew of the Russian torpedo-destroyer *Ratstoropny*, which entered the harbour of Chefoo from Port Arthur, and was scuttled there, was kept by the captain of the Chinese warship *Kaiyo*. It was borrowed from him after negotiations with Tao-tai, and copied as on the preceding page. In fact, this affidavit, being hurriedly made on board the *Kaiyo* after they scuttled their boat, simply narrates that they pledged themselves to not again take part in hostilities during the present war. However, though it was not

specified by the Russians whether or not they should be set free, it was a matter of course that they should not return to Russia, or to go to other countries without the permission of the Chinese authorities, who had not declared at the beginning of the affair that they should not be set free. As is known, the following order of the Chinese Government was clearly stated in the first page of the first paragraph of the first chapter (Duties of Neutral Territories) of the "Manual of Neutral Public Law," which was delivered to every provincial officer with "The Law of Neutrality," of the Chinese government, at the time hostilities began between Japan and Russia.

"Any belligerent warship, which has entered the area of neutral territories in consequence of her defeat in battle, shall be disarmed and detained until the end of the war."

Every provincial authority of China has been managing affairs according to this notice. So if the treatment of the *Ryeshitelni*, which was the first ship to enter the harbour of Chefoo, and the *Ratstoropny*, which was the third, and of the officers and crews of the Russian warships entering Shanghai is taken into consideration, it will be observed how obedient provincial authorities were to the orders of their Government. They interned the Russians under pledge that they should not again take part in hostilities during the war, and were not pleased to set them free. Now with regard to the officers and crew of the *Ratstoropny*, as it was inconvenient and gave some annoyance to keep order on the *Kaiyo*, to detain a large number of the Russians on board her, the Taotai reported her condition to the Chinese Department for Foreign Affairs, while requesting consent to carry them to Shanghai. The Shanghai Taotai, getting the agreement of the Government to which the Japanese Minister gave consent, sent the Russians to Shanghai by the *Kaiyo*, and removed them on board the Russian warships, and interned them there. The principle of the Chinese Government is not changed; moreover, the Taotai proved that it had no intention to set them free by carrying them from Chefoo to Shanghai, when communication was had with the Government in regard to copying their parole.

The form of the parole was as follows:

The captain, officers and crew of the Russian torpedo boat *Ratstoropny* agree and pledge themselves to not re-engage in the present war between Japan and Russia.

Captain of the Russian torpedo boat *Ratstoropny*,
Lieutenant Aleen.

4–17 November, 1904.

Still the Japanese Government, for sake of caution, telegraphed to Consul Odagiri at Shanghai to ascertain whether the Russian captains had left there with the permission of the Shanghai Taotai or not, and heard the truth that no consent had been given by the Taotai to the Russians to leave Shanghai.

Then it is true that the Russian captains escaped from Shanghai, unperceived by the Chinese authorities who were taking charge of them. So they evidently broke their parole. If they wanted to cover their real intentions on the pretext of lacking a staying place in the parole, it undoubtedly proved the lowness of their character. Therefore, on the first of June, 1905, the Japanese Imperial Government replied to the French Ambassador as follows:

The Russian prisoner, Lieutenant Plenn, who has been interned in the Matsuyama garrison, has petitioned to be set free with his companion, Sub-lieutenant Shuvloff. It is true, however, that they pledged themselves at Chefoo not to take part in hostilities again during the continuance of the war; and, properly speaking, both being the Russian naval officers who escaped to Chinese province, they should be kept there in honourable detention under neutral guardianship. Hence, though there was no particular statement about their residence in their parole, they were not allowed to go to any other place.

Moreover, when they were carried to Shanghai with the consent of our Government, the captain of the *Mandjur*, who was to take them on board his ship according to the document signed by the Russian Consul, warranted that he would not send them to any other place without the permission of the Chinese authorities.

In spite of this, disguising themselves as civilians, without the permission of the Chinese, they got on board the British steamer *Nigretia*, and tried to escape into Vladivostock; but, unfortunately, on the way were captured by H. M. S. *Tsushima*. Therefore they may be properly made the prisoners of Japan, and their requests are of course inadmissible. I shall be much obliged to you if Your Excellency will kindly communicate the will of our Government to them in any way you please.

Another Instance of the Violation of Parole.

On the 12th of March, 1905, an official despatch from the front reached the Japanese Government as follows:

Russian Officer Violates His Parole.

One of the Russian officers, late of Port Arthur, who had proceeded to Sinmintun from Shanghai in violation of his oath, has been arrested by our garrison. We have also captured a certain amount of supplies which were being conveyed to the Russian Army.

The following view held by the best newspaper in Japan, the *Jiji*, is worthy of mention:

It is beneath contempt that this man, who on the pledge of his honour promised to remain strictly true to his oath, which he had taken as much toward the Imperial Government as toward his own, should have violated his pledge, and secretly smuggled himself from Shanghai to the battlefield, besides taking with him war supplies for the Russian Army. The matter may only be interpreted in the sense that Russia has purposely violated that clause of The Hague stipulations which makes it obligatory to the signatory Powers not to force their subjects to undertake any act contrary to the oath in virtue of which they are liberated, after being made prisoners of war. At any rate, this is not the first time that Russian officers have committed perjury, as in the cases of the commanders of the *Ryeshitelni* and the *Grozov*, who, both imposing on the credulity of their Chinese custodians, absconded from Shanghai; and it is imaginable that there are many instances of Russian officers and men unlawfully freeing themselves. In the case of these absconders, it may be said, however, they were actuated by merely personal motives; but in the present case, seeing that the offender had in his possession things serviceable to the Russian Army, he may only be regarded as having acted in accordance with the orders of the Russian Government. In that event, all that can be said is that Russia, in that fell act, has forfeited all claims to honour, to say nothing of the depravity of the person concerned. Under the circumstances, it is conceivable that there are other Russian officers who had belonged to the Port Arthur garrison, and are now in Manchuria in defiance of their own pledge. These perjurers, if recaptured, should no longer be treated as prisoners of war, but should be court-martialled and rigorously punished. At the same time, as the conduct of such offenders constitutes the violation of The Hague agreement, our Government should take immediate steps to acquaint the signatory Powers with Russia's treachery and faithlessness. Furthermore, under no circumstances whatever should liberation under oath be granted to Russian combatants, no matter whether they be officers or men. The Russian offi-

cers at Port Arthur were by the special consideration of our illustrious sovereign granted the most honourable treatment possible under the circumstances in which they were placed, and it was hoped that, even though they were Russians, they, on their part, would endeavour to retain their soldiery spirit. But the vainness of hope! Let the world know that the canker worm of perfidy has eaten into the heart of Russia and Russians, there remaining nothing but faithlessness about them.

Sect. IV. The Russian Torpedo Destroyer Bluni, Stranded at Wei-hai-wei.

On Aug. 11, 1904, the Russian torpedo destroyer *Bluni* was stranded about 20 miles distant from Wei-hai-wei, and by efforts of her commander, who reached Wei-hai-wei on the 12th, was rescued by the British warship *Humber*. Her crew, 60 in number, were placed on board British torpedo boats. On Sept. 10 the report was sent in that the crew of the Russian torpedo destroyer detained at Wei-hai-wei were to be forwarded to Hongkong. By that time the French Minister made a demand on the Japanese Minister to restore the crew.

The view held by Japan concerning the matter was as follows:

"Now that the despatch of the Baltic Fleet may turn out to be a fact, it is absolutely necessary for us to prevent the Russian Navy from being restored any of its lost efficiency. Therefore our Government decided to have all the crews of the Russian war-vessels disarmed at neutral ports detained within the respective neutral territories, in compliance with which desire the United States of America, France, Germany, and China have acted.

"We hope that the British Government also will take a similar step at Hongkong. Although some may allege that Russian bluejackets at Wei-hai-wei were compelled to go there by shipwreck, and required treatment different from others, still it is undeniable that the recent naval engagement was the very cause that brought them to that locality."

Later on, granting Japan's request, the British Government managed to have the Russians in question interned in the interior of Queen Park at Koolong.

The British Government issued at Hongkong the following disciplinary regulations regarding the Russian crew:

Rules Regulating the Place of Detention of Belligerent Combatants in the Course of the Russo-Japanese War.

Now that the two states of Russia and Japan are unfortunately engaged in hostilities, combatants of either belligerent do and may seek refuge under the jurisdiction of the British Empire, come and may come into our settlement or its territorial waters, so that for convenience sake the Governor of Hongkong, with the consent of his legislative department, issues the following rules regulating the place of detention for these fugitives:

GOVERNMENT NOTIFICATION.—No. 639.

His Excellency the Governor has given his assent, in the name of and on behalf of His Majesty, to the following Ordinance passed by the Legislative Council:

Ordinance No. 7 of 1904.—An Ordinance to regulate the Internment of Refugees belonging to the Russian and Japanese forces.

By Command,

F. H. May,

Colonial Secretary.

Colonial Secretary's Office, Hongkong, 16th September, 1904.

No. 7 of 1904.

An Ordinance to Regulate the Internment of Refugees Belonging to the Russian and Japanese Forces.

LS

M. Nathan, Governor.

15th September, 1904.

Whereas a state of war unhappily exists between Russia and Japan; and whereas the United Kingdom is on terms of amity with both these countries; and whereas persons belonging to the belligerent forces have sought and may seek refuge under the jurisdiction of the British crown, and have come and may come within the Colony or the waters thereof; and whereas it is expedient that regulations should be made respecting the internment of such persons during the continuance of the said war;

Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:

Short Title.

1. This Ordinance may be cited as the "Internment of Refugee Combatants Ordinance," 1904.

Interpretation of Terms.

2. For the purposes of this Ordinance the expression "to intern" means to confine anywhere within the Colony or the waters thereof, and the expression "interned person" means any person ordered by the Governor to be so confined.

Power to Intern.

3. It shall be lawful for the Governor to intern during the continuance of the present war between Russia and Japan, any person belonging to the forces, naval or military, of either belligerent, who shall seek refuge under the jurisdiction of the British crown, and shall come or be within the Colony or the waters thereof. Any person belonging to the said forces found within the Colony or the waters thereof during the continuance of the said war shall, unless the contrary is proved, be deemed to be a person seeking refuge as aforesaid.

Power to Make Regulations.

4. It shall be lawful for the Governor-in-Council, from time to time as he shall think fit, to make, rescind and vary regulations for the purposes of prescribing the place and conditions of internment, of maintaining order and discipline among the interned persons, and for providing penalties for the breach of the said regulations. All regulations made under this Ordinance shall be published in the *Gazette*, and shall thereupon become as valid as if inserted in this Ordinance.

Penalties for Interned Person Attempting to Escape, Etc.

5. Any interned person who shall escape and be recaptured, or shall attempt to escape, or shall conceal himself, shall be liable, on conviction before a magistrate, to imprisonment with or without hard labour for any term not exceeding the period of internment.

Penalties for Assisting an Interned Person to Escape, Etc.

6. Anyone who assists or procures, or attempts to procure an interned person's escape, or who conceals an interned person, or who assists an interned person to conceal himself, shall, on conviction before a magistrate, be liable to a fine not exceeding one thousand dollars, or to imprisonment with or without hard labor for a term not exceeding one year, or to both.

Power to Search Premises and Vessels.

7. It shall be lawful, in the event of the escape of an interned person, for any British naval or military officer, or any police officer of the Colony, having reasonable ground for suspecting that such in-

terned person is in any premises within the Colony, or on board any vessel (not being, or having the status of, a vessel of war) within the Colonial waters, to search the said premises or vessel without a warrant, and to take back such interned person, if found, to the place of internment.

Operation of Ordinance.

8. Save in respect of penalties, this Ordinance shall be deemed to operate retrospectively as from the commencement of the said war.

Passed the Legislative Council of Hongkong, this 15th day of September, 1904.

S. B. C. Ross,
Clerk of Councils.

Assented to by His Excellency the Governor, the 15th day of September, 1904.

F. H. May,
Colonial Secretary.

Sect. V. The Shanghai Murder Case.

There was scarcely a warship which caused more trouble than the *Askold*. It was this ship that barely consented to be disarmed, and endeavoured to repair herself, so that it was reported, not without foundation, that she intended to escape from Shanghai to join the Baltic Fleet. And it was her crew that caused "The Shanghai Murder Case."

The Shanghai *Mercury* of the 15th inst. gives particulars of the affair, as follows:

"At about 4.20 p.m. to-day a terrible crime was committed on the Nanking Road Jetty. A ricksha coolie had been carrying a Russian sailor belonging to the cruiser *Askold* all the afternoon and when they arrived at the Nanking Road Jetty, the sailor alighted, and started away without paying his fare. The puller followed the man on to the pier, demanding his fare. When just behind Sir Harry Parkes' statue a native carpenter who was employed making repairs to the jetty came up to the two men and started to explain matters to the Russian, who, without any warning, seized an adze which the carpenter had in his hand, and aimed a terrific blow at the ricksha coolie. It missed the coolie, and struck another native who was passing by, splitting the unfortunate man's head open. The poor man fell to the pavement, weltering in his blood and brains. The sailor, after dealing the dastardly blow, started to run away, making for

the end of the jetty, followed by a comrade. Three Sikh policemen, who had fortunately seen the affair, gave chase to the assassin and caught him before he managed to secure a sampan, which he was evidently in search of. The companion gave himself up without any trouble, but the one that struck the native offered a terrific resistance to the police; and it was only after a severe struggle that the policemen managed to overpower him and take him and his friend to the Central Police Station. The wounded man was placed in an ambulance and taken to the Shantung Road Hospital where everything possible was done for him; but the case was hopeless and his death is only a matter of a few hours."

Commenting editorially on the above the paper says: "The brutal and unprovoked murder committed by the sailor belonging to the Russian cruiser *Askold*, of which an account is given, emphasises the protest lodged by the Japanese Consul and the municipal council against these drunken and undisciplined men being allowed to roam through the streets of the settlements at their own sweet will. This is a question which the consuls should immediately take up. The terms on which the crews of the Russian warships are held here demand that they should be confined on board their vessels and that necessary exercise should only be taken under the supervision of their officers in a place specially set apart for that purpose. The consular body should, therefore, insist that these conditions be strictly fulfilled. We hope the Russian Consul will, for his own credit, see that the prisoner is tried in public, and not sent on board his vessel, otherwise the public, and especially the Chinese, will not believe that justice has been done."

The same paper of the 16th inst. says: For some time past the sailors belonging to the various Russian warships now in port have been coming ashore to the international settlement in large numbers, there never being less than forty or fifty men on leave at one time. Immediately on arriving on this side of the river they have made for resorts in the Hongkew district, principally in the Boone and Fearon Roads. Here all sorts of unseemly orgies have been indulged in, the men getting hopelessly drunk, fighting among themselves, insulting passersby, etc. Patrols who have been sent ashore to look after these drunken men, instead of doing their duty and maintaining order among the brawlers, have themselves got so intoxicated that they have become quite helpless. After creating a reign of terror in the district, the semi-intoxicated men engage rickshas, usually taking those having only one license, that is for the English Settlement. On getting to the Yangkingpang Creek they jump out of their rickshas and cross over to the French concession without paying the poor ricksha pullers, who not having a French license are unable to cross the

boundary after their fares. If, however, one of them is daring enough to cross over he is greeted with a shower of abuse and not infrequently beaten for his pains by the rowdy sailors, who after defrauding the coolies of their rightful due, get into their steam launch and go on board their vessels rejoicing. The police of both the settlements have been powerless to restrain the men when they come ashore, and if one of them is arrested and taken before his consul, he is sent on board his ship and that is the last of the affair, complainants who have come to grief through their carryings on, it is stated, not receiving any satisfaction whatever.

The Chinese Government requested the extradition of the criminals. The following are the details as they appeared in the Shanghai paper:

A telegram received by the *Jiji*, dated the 20th inst., states that the Chinese from Ningpo, who are resident at Shanghai, have collected funds for the engagement of a foreign counsel in connection with the prosecution of the Russian bluejacket who recently murdered a Chinese named Cheu Shang-yin. They have also petitioned the Taotai that steps be taken to examine the culprit at the foreign settlement at Shanghai and not on board the *Askold*, as is intended by the Russians. The Taotai has accordingly requested the Russian Consul to hand over to the Chinese authorities the two Russian bluejackets implicated in the affair, in order that the men may be tried by the Shanghai district magistrate.

The captain of the *Askold* declined to try the case on board the ship, and handed over the criminals to the Russian Consul at Shanghai, but he did not extradite them to the Chinese authorities. On the contrary he published the following notice in Shanghai papers:

"The Russian bluejacket who fatally wounded a Chinese on the 15th ult. will be examined by a special court, to be opened at Shanghai, according to special instructions received from the Russian Government; this exception to the general rules and public law of Russia, according to which the offender must be delivered to Russia for punishment, being due to the unusual circumstances which preclude the delivery of the accused to Russia. Admiral Reizenstein, having received the commission to

carry out a preliminary examination of the criminal, appoints the following court: presiding judge, Commander D'Essai, senior officer of the *Askold*; associate judges, Lieutenants Grodin, Kondrazy, and Ekhimoff, Sub-Lieutenants Oldosky and Honaievsky; clerk, Sub-Lieutenant Mezedeff. The court will be opened at 10 a.m. to-morrow at the Russian Consulate. The public will be admitted."

The Russian Consul also invited the Shanghai Tao-tai to come to the court as one of the auditors.

The following is the detailed account made by the Tao-tai:

What the Russian Consul at Shanghai Insisted Upon.

According to Art. II. of the Revised Treaty between Russia and China, Russian criminals must be sent back to Russia and tried there. There is no agreement to open a special court by mixed judges. Now, in the present case, as it is in time of war with Japan, there are no easy means to send criminals back to Russia, so the Russian Government decided to try the case at Shanghai, and for that purpose ordered the captain and officers of the *Askold* to act as judges.

What the Chinese Authorities at Shanghai Insisted Upon.

In Art. III. of the Ten-tsin Treaty between Russia and China, the words "mixed judgment" are used. So it is quite unfair to say that there is no agreement concerning a mixed court. Moreover, it must be noticed that the Russian warships are now interned in Shanghai, and during the internment several regulations were made by the Chinese authorities, i.e., the crew of the Russian ships were under Chinese jurisdiction during the time of war. The ordinary treaty does not apply to the members of the interned crews. Even if the matter came under the ordinary treaty, it must be decided by the mixed court. Why, then, could not the case in question have been tried by the Chinese authorities?

The Shanghai Tao-tai sent a telegram to Wai-wu-pu, the Chinese Foreign Office, asking to open a mixed court, and the Wai-wu-pu requested the Russian Minister at Peking to do so, but the latter would not consent. Hereupon the Chinese Gov-

ernment gave instructions to the Chinese Minister at St. Petersburg to demand the extradition of the Russian criminals, and at the same time asking Russia to agree in issuing the following regulations relating to the interned crew:

(1) That the views of the Taotai shall be final in all matters relating to the protection of the Russians; (2) that no Russians shall be allowed to walk out freely, except for exercise on the open space at the pier of the Chinese Eastern Railway Company; (3) that China shall, without the interference of the Russian authorities, have power to try those Russians who may, in violation of China's neutrality, attempt to escape and are arrested; (4) that the Taotai shall be entitled at any time to visit the Russian warships and examine the number of the Russians on board; (5) that the Taotai shall also be authorised to despatch the customs authorities or naval and military officers to the Russian vessels in order to see if the Russians, in spite of their obligations, are coaling, or refitting, or taking in war material; (6) that the Taotai shall be authorised to request the *doyen* of the foreign consuls at Shanghai to order the settlement police to arrest any defaulting Russians seen in the settlement; (7) that an interpreter shall be despatched to Shanghai from Peking in order to assist in the negotiations which may arise between the Chinese and Russian authorities.

While the negotiations between the Chinese Minister at St. Petersburg and Russia were going on, the Russian Consul at Shanghai opened the court as it had been advertised, and gave judgment in the case.

The detail is as follows:

Public Degradation of the Culprit.

The *N.-C. Daily News* of the 18th inst., says:

The special tribunal convened for the trial of the Russian sailors Ageef and Diak again assembled at the Russian Consulate on the 17th inst. to pronounce their final judgment against the accused. The judgment, which has received the admiral's sanction, has been courteously handed to us, as follows:

"The sentence passed by the Special Court upon Terente Ageef, 1st Class fireman of His Imperial Russian Majesty's cruiser *Askold*, and Jacob Diak, sailor of the 2nd class of the same cruiser, by the special commission appointed by Rear-Admiral Reitsenstein and consisting of the following members:

"Commander Teshe, chief officer of the *Askold* (President); Lieutenant Brovzyn, Mandraji, Eximoff, and Sub-Lieutenant Ordovsky-Tansievsky; Sub-Lieutenant Medvedeff, Secretary; and confirmed by the Admiral in the following order:

"I confirm and order the commander of the cruiser *Askold* to fulfil the sentence, according to the judgment which was as follows:

"The court, taking into consideration all the circumstances, decides that the 1st-class fireman Terente Ageef has to lose all his rights and privileges, and to be transported for four years with hard labour.

"And as it is impossible to transport him at the present time to Russia, he shall be imprisoned in the French Municipal gaol for the time being.

"Diak, of the same cruiser *Askold*, has been brought before the court only through the exceptional circumstances, and as it is clearly found by the court, that he, the second-class sailor Diak, did not offend but simply disobeyed the orders of the police, and taking into consideration his good conduct and service, and his perfect military service, for which he was decorated with the Fourth Order of St. George, I, by virtue of the power given to me, forgive his fine.

"(Signed) REAR-ADMIRAL REITSENSTEIN."

The accused were again present in charge of a strong guard of Russian sailors. The President of the Court read out the judgment in Russian and immediately afterwards the gist of it was translated to Inspector Matheson in order that his interpreter might translate it to the Chinese present in court. When this had been done, Diak was released, and then some members of the naval guard stepped up to Ageef and proceeded to strip him of the badges of his rank. A medal on his right breast was taken away, his brass buttons and shoulder straps were ripped off, and the badge and riband on his cap were removed. Ageef seemed to feel his position very keenly, and though he submitted to this degradation quietly the unwonted pallor of his features showed how he was suffering.

Ageef was then handed over to two of the French police, who were in plain clothes. He was hurried out of Court into a carriage which was in waiting and driven rapidly away to the French gaol, where he is to serve his sentence.

The Russian authorities evidently feared a hostile demonstration on the part of the Chinese, as immediately after Ageef had left, a guard of about thirty sailors was drawn up in the doorway of the Consulate. The police, however, had taken all precautions, and there were very few natives in the vicinity. When it became evident that

no hostile Chinese were at hand, the guard formed up and marched to the nearest jetty, where the sailors embarked to get to their vessel on the Pootung side.

H. E. Shêng Kung-pao and Mr. Kleimenoff, the Russian Consul-General, had an interview on the 17th inst. which lasted four hours, during which the question of the trial of Ageef was thoroughly discussed. The dissatisfaction of the Ning-po men here arises from the fact that no Chinese official was present at the recent court-martial, and that some of the Chinese witnesses who saw the incident were not called. The Consul-General expressed his great regret that the incident should have aroused the Ningpo men here as it has done, and promised to send H. E. Shêng a report of the whole of the evidence as soon as possible. H. E. Shêng has promised the Ningpo gentry here that he will investigate the matter as soon as he receives this evidence.

After the judgment was given, it was said that the Russian Naval authorities consented to extradite the criminals to China, but it was too late.

Sect. VI. The Crew of the Lena.

The Imperial Government despatched to Minister Takahira instructions in the following sense concerning the treatment of the crew of the *Lena*:

In case the disarmament is to be executed, the Japanese Government wishes to have the crew detained within American territory till the end of the war. As regards the detention of the crew of the disarmed man-of-war, our government has already made the same arrangement, granted through negotiations with the British and German Governments, and is now in the course of negotiations with China and France.

Mr. Takahira negotiated with the Acting Secretary of State concerning the subject, in the manner shown by the correspondence cited below.[1]

Mr. Takahira to Mr. Adee.

Legation of Japan, Washington, September 16th, 1904.

SIR:

In regard to the disposal of the officers and crew of the Russian armed transport *Lena* after her disarmament, as referred to in your

[1] *Foreign Relations*, 1904, pp. 429–430.

note of the 15th instant, I have the honour to inform you that I have received to-day from His Imperial Majesty's Minister for Foreign Affairs telegraphic instructions to the effect that I should inform the Government of the United States of the desire of the Imperial Government to have the said officers and crew detained in the territory of the United States until the end of hostilities.

In making the above communication to you, I beg leave to express my earnest hope that the Government of the United States will find it agreeable to take into their favourable consideration the desire of my government as above mentioned.

Accept, Mr. Secretary, the renewed assurances of my highest consideration.

(Signed) K. TAKAHIRA.

The following was the reply:

Mr. Adee to Mr. Takahira.

Department of State, Washington, September 17th, 1904.

SIR:

I have the honour to acknowledge the receipt of your note of yesterday, in which, with regard to the disposal of the officers and crew of the Russian armed transport *Lena* after disarmament, as referred to in my note of the 15th instant, you advise me that you received yesterday instructions to inform the Government of the United States of the desire of the Imperial Government to have the said officers and crew detained in the territory of the United States until the end of hostilities. In making the above communication to me, you express the earnest hope that the Government of the United States will find it agreeable to take into favourable consideration the desire of your government as above mentioned.

In reply, I have the honour to state that the President, exercising his prerogative in carrying out the neutrality proclaimed by him, had already, before the receipt of your communication, taken the appropriate steps to detain the officers and crew of the *Lena* in this country until peace shall have been concluded, unless in the meantime the belligerents shall have concurred in proposing to him other arrangements in this regard.

Be pleased to accept, sir, the renewed assurance of my highest consideration.

ALVEY A. ADEE,
Acting Secretary of State.

Mr. Kogoro Takahira, etc., Washington.

Later on the State Department was asked by the Russian Government that permission be given to Captain Sinter to replace Admiral Berlinski of the *Lena*, who went to Russia on sick leave, the Russian Minister of Marine guaranteeing that Berlinski will take no part in the war. To this the Japanese Government consented.

Such was the substance of the *Lena* affair, which gave a chance to the United States of America of distinguishing herself as our fellow-advocate (so free from partiality) of a new principle of International Law.

CHAPTER III.

THE SALE OF VESSELS BY NEUTRALS TO BELLIGERENTS DURING THE RUSSO-JAPANESE WAR.

Sect. I. Sale of Warships by a Neutral Government to a Belligerent.

A neutral government fails in its duty by furnishing to a belligerent vessels of war, arms, or any other species of war material.[1]

In 1825 the Swedish Government, having the opportunity to dispose of some condemned vessels of its fleet, sold a vessel of the line and two frigates to a Stockholm trading firm.

The vessels were immediately resold to an English house, which, it transpired in the sequel, probably held an agency for the insurgent Mexican Government.

The Spanish Government having complained of the transaction, the Swedish Ministers, whilst defending their action as absolutely within their legal right, rescinded their contract at considerable pecuniary loss.

So in 1864, the British Government, in view of the American Civil War, stopped sales of unserviceable vessels, and actually paid the sum of £100,000 by way of compensation for the detention in British ports and the prevention of the sale of a flotilla of vessels, which had been collected for the Chinese service, and subsequently left on the hands of the British Commander of the expedition.

A neutral Government is under obligations not to sell to a belligerent either war vessels, or any other materials which may promote its warlike efficiency.

[1] Walker's *Manual of Public International Law*, p. 162.

The fact has been confirmed that in the course of the late war the Russian Government attempted the purchase of war vessels from a neutral (while our own was entirely innocent of such an illegal scheme).

On the Russian Purchase of Argentine War Vessels.

On the 23rd of June, 1904, several newspapers of the Argentine Republic stated that Russia was about to purchase several Argentine war vessels. The Argentine Minister, with the view of determining if there was any truth in it, made inquiry. He said as follows:

Recently a certain German merchant at Buenos Ayres sent in to the Argentine Government an application for the purchase of war vessels, acting as agent for a certain European Power. On being told that the Government would do nothing with such an application unless well convinced of the legitimacy of the procedure, the applicant declared that the Power concerned was Turkey.

Thereupon the Argentine Government telegraphed to Calvo, Argentine Minister at Paris, to ascertain whether the statement of the German merchant was true, and got an answer to the effect that the Turkish Government had no intention of purchasing any war vessels, and that the said vessels were to be resold to the Russian Government. So that the negotiations were abandoned, and the merchant received chastisement because of his fraud.

Besides, the same Minister Gorostiaga remarked that his Government would not venture to sell any war vessel to a belligerent now that the express declaration of neutrality had been issued.

Nevertheless the following information was sent in, on November 6th the same year.

Charles Flint, of New York, head of the firm of Messrs. Flint and Co. and of Flint, Eddy and Co., has obtained through Hart Berg a contract with the Russian Government for sell-

ing to Russia of certain-men-of-war, by Chile and the Argentine Republic. Winfield Stern, of New York, tried to get a neutral Power to carry out this contract. The Persian Minister to France agreed to obtain the consent of his government to become such neutral, and did obtain it. The Chilian and Argentine Governments each signified their acceptance of this neutral. Flint, who arrived in Paris September 19th, left for Russia October 31st, accompanied by Berg. During his stay in Paris, he conferred very frequently with Stern and Captain Brousselof of the Russian Navy, sent from Russia to facilitate negotiations. Stern left Paris October 22nd, and sailed from Lisbon October 24th for Buenos Ayres, where he will arrive about November 14th. His arrival at Buenos Ayres will close the arrangement of the matter.

The price of the sale is not clearly known, but is believed to be about $17,000,000.

But these rumours did not materialize.

Sect. II. Sale of War Vessels from Neutral Firms to a Belligerent.

International Law imposes an obligation upon a neutral government to prevent its subjects from selling any war materials to either party of the belligerents.

The fact cited below demonstrates that Russia was not entirely innocent of having purchased warships from neutral firms.

Still fresh in Japan's remembrance, are articles found in several British newspapers of November 22 or 23, 1904, stating that the torpedo destroyer *Caroline* (515 tons, 25.5 knots), built by the Yarrow Co., was purchased by the Russian Government, and duly delivered on October 10th at Libau.

Apparently in this transaction the matter was promptly carried out by the parties concerned, although the British Government was always exercising due diligence.

Sect. III. Sale of Vessels Other Than War Vessels from Neutral Firms to a Belligerent State.

In the time of "hostilities" the purchase of vessels other than war vessels by a belligerent Government from neutral firms cannot be prohibited, as in the case of war vessels, although it is a question how far a neutral Government is obliged to interfere with such purchases, if the vessels concerned are clearly to be directed for warlike purposes.

The Japanese Government has never purchased from a neutral any vessel with the purpose of making it a war vessel, whereas Russia, since the outbreak of hostilities, purchased the following ships from the North German Lloyd Company and the German Hamburg-American Company, and fitted them up as war vessels at Libau:

I. *The Furst Bismarck.*
II. *The Kaiserin Maria Theresa.*
III. *The Colombia.*
IV. *The August Victoria.*
V. *The Lahn.*
VI. *The Belgia.*
VII. *The Deutschland.*
VIII. *The Kaiser Friedrich.*

The Franche-Comte.

Furthermore, the following one was purchased from the Societé General de Transportation Marine à Vapeur:

Most of these, however, were reported by western papers after the war as having been repurchased by their original owners.

One thing to be noticed, is the denial of the rumour of Germany's aiding Russia concerning the sale of vessels, so strongly upheld by the German Premier, who, on April 14th, 1904, in the *Reichstag* declared that the sale of vessels to Russia was far from showing any partiality for Russia against Japan, since Japan could procure just the same favour if she was so inclined. He cited a similar precedent from the Spanish-

American War, in the course of which Germany sold mail ships to Spain through the intermediary of a third Power.

Still it must be noticed from the point of view of International Law that any breach of neutral obligation cannot be justified by allowing the same thing to both belligerent countries, and if the Nord Deutch Loyde Company have received subsidies from the German Government, on condition that the vessels of the company are at the disposal of the said government in time of war between Germany and other Powers, the said Government must have some responsibility in overlooking the sale of such vessels to one of the belligerents, such as Russia in the late war.

Sect. IV. Sale of Vessels by Neutral Subjects to Belligerent Subjects.

No blame can be attached to such a purchase.

In 1904, 73 vessels, and in 1905, 81 vessels were purchased by Japanese subjects, which fact affords testimony to Japan's perfect command of the sea, making it secure enough for them to be engaged in active navigation. In contrast to this, the common usage of belligerent subjects is to evade capture by the enemy by transferring their own vessels to neutral subjects, as, for instance, ships of the Chan-Shang-Kink, China, in the time of the Chino-Japanese War.

Following is annexed a table, containing the number and tonnage of vessels chartered by Japanese subjects from foreigners, none of which, except some illegally damaged by Russian warships, met with an accident.

This actually shows how powerful is the naval power of Japan, by which these vessels were protected, in the presence of the enemy's fleet.

TABLE SHOWING THE VESSELS CHARTERED BY JAPANESE SUBJECTS, 1904–1905.[1]

Nationality / Time	British.		Germany.		Norway.		Sweden.		Denmark.		Oriental Countries.		France.		Total.	
	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.
1904.																
February...	5	14,292	2	4,468	....	.....	....	.....	....	.....	....	.....	....	.....	7	18,760
March.....	21	65,733	13	24,244	17	25,037	2	3,214	1	1,404	1	1,027	....	.....	55	120,659
April.....	27	84,144	16	29,802	23	33,005	2	3,214	1	1,404	1	1,027	....	.....	70	152,596
May.....	30	92,610	17	31,488	25	36,406	2	3,214	1	1,404	1	1,027	....	.....	76	166,149
June.....	28	84,658	18	33,735	25	36,223	2	3,214	1	1,404	1	1,027	....	.....	75	160,261
July.....	22	62,831	17	32,122	23	33,955	2	3,214	1	1,404	1	1,027	....	.....	66	134,553
August.....	24	68,723	14	26,625	22	33,031	2	3,214	1	1,404	1	1,027	....	.....	64	134,024
September..	21	60,076	16	28,114	31	48,767	3	4,354	....	.....	1	1,027	....	.....	72	142,338
October....	23	64,569	14	24,233	31	48,767	3	4,354	....	.....	1	1,027	....	.....	72	142,950
November..	21	57,621	14	23,957	26	40,067	3	4,354	....	.....	1	1,027	....	.....	65	127,026
December...	18	52,305	10	16,443	23	36,991	2	3,214	....	.....	1	1,027	....	.....	54	109,980
1905.																
January....	13	36,335	8	13,055	26	39,188	2	3,214	....	.....	1	1,027	....	.....	50	92,819
February...	17	48,576	5	8,324	26	39,348	1	1,637	....	.....	1	1,027	1	694	51	99,606
March.....	22	62,156	2	3,859	29	45,511	1	1,637	....	.....	....	.....	1	694	55	113,857
April.....	27	76,921	4	8,251	40	67,472	2	3,214	....	.....	....	.....	1	694	74	156,552
May.....	27	77,364	5	10,279	45	78,707	2	3,214	....	.....	....	.....	2	2,493	81	172,057
June.....	31	91,011	8	15,326	46	77,377	2	3,214	....	.....	....	.....	2	2,493	89	189,421
July.....	28	85,896	8	14,263	47	80,200	1	1,637	....	.....	....	.....	2	2,493	86	184,489
August.....	28	85,844	9	15,783	45	74,801	1	1,637	....	.....	....	.....	1	1,799	84	179,864

[1] This is a table made by a steamship company in Japan.

CHAPTER IV.

CONTRABAND OF WAR.

Sect. I. The Japanese Attitude.

On the 10th of Feb., 1904, the order of the Japanese Naval Department concerning contraband of war was issued. In general, it follows the British and American practice of making a distinction between absolute and conditional contraband. It runs thus:

Order of the Navy Department Concerning Contraband of War in the Russo-Japanese War. (*Order No. 1.*)

The following articles are contraband of war in the Russo-Japanese War:

1. The following articles are contraband of war when they pass through, or are destined to, the enemy's territory, or to the enemy's army or navy:

Arms, ammunition, explosives, and materials (including also lead, saltpetre, sulphur, etc.), and machines for manufacturing them, cement, uniforms and equipments for army and navy, armour plates, materials for building ships and their equipments, and all other articles to be used solely for hostile purposes.

2. The following articles are contraband of war in case they are destined to the enemy's army or navy, or *in case they are destined to the enemy's territory, and from the landing place it can be inferred that they are intended for military use*:

Provisions and drinks, clothing and materials for clothing, horses and harness, fodder, wheeled vehicles, coal and other kinds of fuel, timber, currency, gold and silver bullion, and materials for telegraph, telephone, and railroad lines. (The words "clothing and materials for clothing" and "other kinds of fuel" were added by order No. 1 of the Navy Department, of the 38th year of Meiji.)

3. Of the articles mentioned in the above two clauses, if it is clear from their quality and quantity that they are intended for the vessel's own use, such articles shall not be considered contraband of war.

Arts. XIII., XIV., and XV. of the Japanese Prize Regulations are exactly the same as the above mentioned order.

ART. XIII. The following goods are contraband of war when they are destined to the enemy's territory or to the enemy's army or navy:

Arms, ammunition, and explosives, and materials (including (also) lead, saltpetre, sulphur, etc.), and machines for manufacturing them, cement, uniforms and equipment for the army and navy, armour plates, materials for building ships and other equipment, and all articles to be used solely for hostile purposes.

ART. XIV. The following goods are contraband of war in case they are destined to the enemy's army or navy, or in case they are destined to the enemy's territory, and from the landing place it can be inferred that they are intended for military purposes: provisions and drinks, clothing and materials for clothing, horses, harness, fuel, wheeled vehicles, coal and other kinds of fuel, timber, currency, gold and silver bullion, materials for the telegraph, telephone, and railroad lines.

ART. XV. The destination of a vessel is generally considered as also the destination of her cargo.

A Question Concerning the Japanese Declaration of Contraband.

When the Japanese notification of the 10th of Feb., 1904, enumerating contraband of war was reported to the British Government, the British Government felt some anxiety regarding the words, "*In case they are destined to the enemy's territory,*" which appears in the second paragraph of the article mentioned as second-class contraband goods. It was desired to know whether the article correctly stated the language of the notification, or whether the language of the proclamation issued in 1894 which, it said, appears textually to follow the terms of Imperial Ordinance 149, Prize Court Law, Chapter 1. Art. X. should be relied on. Below is the answer of the Japanese Government. (Under date of Feb. 27.)

The second paragraph of the notification of February 10th reads literally as follows:

"The following goods shall be contraband either in case their destination is the enemy's army or navy or in case their destination is the enemy's territory, when it may be presumed

from the position of such destination that the said goods are intended for the use of the enemy's army or navy."

The only difference between the present notification and the Prize Law of 1894 is that in the latter the words "enemy's ports" occur in place of "enemy's territory."

This makes no practical difference, and it will be noticed that some of the published English translations of the Prize Law are erroneously rendered in this respect.

Again, on March 10th, 1904, the Marquis of Lansdowne told the Japanese Minister at London that the principle laid down in the latter part of the paragraph in question was an illegal extension of the principle in regard to food stuff.

He said the British Government would regard with alarm such an extension, which would also be found to run counter to the views of the United States, and which seemed moreover to be contrary to the interests of Japan as a maritime insular power.

Accordingly His Lordship wished to know the exact terms of the Japanese notification of February 10th regarding the matter.

Concerning the destination of conditional contraband in the said article, there took place again some questioning when the *Hsiping* was detained and some conditional contraband on board the vessel was condemned by the Japanese Prize Court. The question is quite scientific, and is a very good example for the study of International Law.

The views of the Japanese Government and Japanese lawyers are as follows:

As regards the interpretation of Art. XIV. of the Japanese Regulations Respecting Captures at Sea, the British Foreign Office appears to labour under misapprehension. They seem to construe that certain kinds of articles destined for the enemy's territory are treated as contraband on mere presumption that they might be provided eventually for the use of the enemy's naval or military forces; but this is not the correct interpretation of the aforesaid article. Art. XIV. of the Regulations

Respecting Captures at Sea says that "goods hereinafter mentioned are treated as contraband of war only when they are destined for the enemy's army or navy, or when destined for the enemy's territory, and when, having regard to the nature and character of such destination, they can reasonably be considered as intended for the use of the enemy's army or navy."

The former part of the article, viz., the case when "they are destined for the enemy's army or navy," of course implies the case where there is direct evidence that the goods shall reach the enemy's army or navy; for instance, when the goods are addressed to a military force or a fleet of the enemy.

The latter part, viz., "when destined for the enemy's territory, and when, having regard to the nature and character of such destination they can reasonably be considered as intended for the use of the enemy's army or navy," means such a case as, taking into consideration all the surrounding circumstances, such as the nature and character of the locality of their hostile destination, the kind and nature of the goods themselves, etc., it can be reasonably assumed that the goods will be provided for the use of the enemy's army or navy; though there may not be any direct evidence of their intended delivery.

Thus it will be seen that even in the case of the latter part of the article, the principle of the regulations does not condemn any goods as contraband upon the mere fact that their destination is in a hostile quarter, but it stigmatises them as such only when circumstantial evidence amply shows that the goods are intended for the use of the enemy's army or navy. Such being the case, the provision of Art. XIV. of Japan's regulations does not much differ, in the main, from the principle hitherto sustained by the British Government, and most decidedly it is not an undue extension of the theory concerning contraband of war.

And it can certainly be maintained that the Sasebo Prize Court, in giving decision respecting the cargoes of the *Hsi-ping*, did not disregard the principle just referred to.

For instance, it may be pointed out that the decision of the

Sasebo Prize Court in condemning the food stuffs and beverages found on board the *Hsiping* as contraband was based on the grounds that the goods were of such a nature as are specially suitable for the use of Europeans, that there being at the time in the part of Newchwang, whither the goods were destined, only a small number of Europeans other than Russians, those articles could not be considered as destined for the local European residents; while, on the other hand, it was a well-known fact that not only a multitude of the Russian forces was stationed there, but the port itself was then a chief commissariat basis of the Russian Army, and that under these circumstances no contention can possibly be entertained against the conclusion that the aforesaid food stuffs and beverages were intended for the use of the hostile forces.

Sect. II. The Russian Attitude.

The Russian rules in regard to maritime prizes were approved by the Emperor on March 27, 1895. These rules are full, containing 93 articles.

The following articles are deemed to be contraband of war:

(1) Small arms of every kind, and guns, mounted or in sections, as well as armour plates.

(2) Ammunition for firearms, such as projectiles, shell fuses, bullets, priming, cartridges, cartridge cases, powder, saltpetre, sulphur.

(3) Explosives and materials for causing explosions, such as torpedoes, dynamite, pyroxyline, various explosive substances, wire conductors, and everything used to explode mines and torpedoes.

(4) Artillery, engineering and camp equipment, such as gun carriages, ammunition waggons, boxes or packages of cartridges, field kitchens and forges, instrument waggons, pontoons, bridge trestles, barbed wire, harness, etc.

(5) Articles of military equipment and clothing, such as bandoliers, cartridge boxes, knapsacks, straps, cuirasses, intrenching tools, drums, pots and pans, saddles, harness, completed parts of military uniforms, tents, etc.

(6) Vessels bound for an enemy's port, even if under neutral commercial flag, if it is apparent from their construction, interior fittings, and other indication that they have been built for warlike purposes,

and are proceeding to an enemy's port in order to be sold or handed over to the enemy.

(7) Boilers and every kind of naval machinery, mounted or unmounted.

(8) Every kind of fuel, such as coal, naphtha, alcohol, and other similar materials.

(9) Articles and materials for the installation of telegraphy, telephones, or for the construction of railroad.

(10) Generally, everything intended for warfare by sea or land, as well as rice, provisions, and horses, beasts of burden, and other materials which may be used for warlike purposes, if they are transported on the account of, or are destined for, the enemy.

The following acts, forbidden to neutrals, are assimilated to contraband of war: The transport of the enemy's troops, of his despatches and correspondence, the supply of transports and warships to the enemy. Neutral vessels captured in the act of carrying contraband of this nature may, according to circumstances, be seized, and even confiscated. (Rules of February 16, 1906.)

The following is an order issued by the Russian authorities in Yingkow:

Order No. 25.

14-27 March, 1904.

According to an order issued by the Viceroy of His Imperial Majesty in the Far East, the Port of Yingkow has been proclaimed to be under martial law. Until the publication of the said order the following regulations shall be enforced, and are brought into immediate operation:

1. Martial law extends over the town and port of Yingkow, and over the whole of the population without distinction as to nationality.

2. The passengers and cargoes arriving here are to undergo examination, and for this purpose all steamers, sailing vessels, and junks, having entered the mouth of the river, must anchor at the distance of 5½ miles below the port. A steam launch, tide permitting, and exclusively during daylight, with a naval and customs officer on board, will meet the vessels at that spot; they will examine the vessels and conduct them to the berths which will be allotted to them by the Customs.

3. The import of arms and ammunition is prohibited.

4. It is prohibited to export to any port of Japan or Korea any articles of military contraband named in the accompanying list.

5. When exporting such articles to neutral ports, the shipper has to pay into the Customs a sum as security equal to the value of the

cargo, as a guarantee that this cargo will not be reshipped from the neutral port to any port of Japan or Korea.

6. The lightship and leading marks will temporarily not be put up at the mouth of the river.

7. When dealing with articles contraband of war the regulations sanctioned by His Majesty on the 14th February, 1904, are to serve as guidance.

8. Military and civil authorities of the town and the port of Yingkow have to be guided by the regulation and laws published in S. 23, defining the administration of Provinces.

(Signed) V. GROSSE.

List of the Articles Considered as Contraband of War.

Arms, artillery guns, armour, ammunition, material for explosive purposes. All articles for military carts, wire, pontoons, everything in connection with military equipment; seagoing vessels, even when flying neutral flags, but proceeding to the enemy's port for military purposes; ships' engines and machinery, boilers coal, petroleum, spirits of wine, materials for telegraph and telephone lines, eatables, beans, beancakes, oil, rice, horses and other animals, cattle, and, in general, all articles for naval and military warfare.

This Russian declaration in regard to contraband called forth definite statements in regard to the position which certain neutral Governments proposed to assume. Various protests against the extreme position of Russia were lodged with that Government.[1]

Protests Against Russian Attitude, 1904–5.

The Government of the United States sent the following communication:

Department of State, Washington, D. C., June 10, 1904.

To the Ambassadors of the United States in Europe.

GENTLEMEN:

It appears from public documents that coal, naphtha, alcohol, and other fuel have been declared contraband of war by the Russian Government. These articles enter into general consumption in the arts of peace, to which they are vitally necessary. They are usually treated not as "absolutely contraband of war," like articles that are intended primarily for military purposes in time of war, such as ordnance, arms,

[1] *International Law Topic and Discussion*, 1905, pp. 34-47.

ammunition, etc., but rather as "conditional contraband," that is to say, articles that may be used for or converted to the purposes of war or peace, according to circumstances. They may rather be classed with provisions and food-stuffs of ordinary innocent use, but which may become absolutely contraband of war when actually and especially destined for the military or naval forces of the enemy.

In the war between the United States and Spain the Navy Department, General Orders, No. 492, issued June 20, 1898, declared in Art. XIX. as follows:

"The term contraband of war comprehends only articles having a belligerent destination." Among articles absolutely contraband it declared ordnance, machine guns, and other articles of military or naval warfare. It declared as conditional contraband "coal, when destined for a naval station, a port of call, or a ship or ships of the enemy." It likewise declared provisions to be conditionally contraband "when destined for the enemy's ship or ships, or for a place that is besieged." The above rules as to articles absolutely or conditionally contraband of war were adopted in the naval war code promulgated by the Navy Department, June 27, 1900. (Withdrawn February 6, 1904.) While it appears that the documents mentioned that rice, food-stuffs, horses, beasts of burden, and other animals which may be used in the time of war are declared to be contraband of war only when they are transported for account of or destined to the enemy, yet all kinds of fuel, such as coal, naphtha, alcohol, are classified along with arms, ammunition, and other articles intended for warfare on land and sea.

The test in determining whether articles *ancipites usus* are contraband of war is their destination for military uses of a belligerent. Mr. Dana, in his notes to Wheaton's *International Law*, says:

"The chief circumstance of inquiry would naturally be the port of destination. If that is a naval arsenal, or a port in which vessels of war are usually fitted out, or in which a fleet is lying, or a garrison town, or a place from which military expeditions are fitted out, the presumption of military use would be raised more or less strongly, according to circumstances."

In the wars of 1859 and 1870 coal was declared by France not to be contraband. During the latter war Great Britain held that the character of coal depended upon its destination, and refused to permit vessels to sail with it to the French fleet in the North Sea. Where coal or other fuel is shipped to a port of a belligerent, with no presumption against its specific use, to condemn it as absolutely contraband would seem to be an extreme measure.

Mr. Hall, *International Law*, says:

"During the West African conference in 1884 Russia took occasion

to dissent vigorously from the inclusion of coal among articles contraband of war, and declared that she would categorically refuse her consent to any articles in any treaty, convention, or instrument whatever which would imply its recognition as such."

We are also informed that it is intended to treat raw cotton as a contraband of war. While it is true raw cotton could be made into clothing for military uses of a belligerent, a military use for the supply of the army or garrison might possibly be made of food-stuff of every description which might be shipped from neutral ports to the non-blockaded ports of a belligerent. The principle under consideration might, therefore, be extended so as to apply to every article of human use which might be declared contraband of war simply because it might ultimately become in any degree useful to a belligerent for military purposes.

Coal or other fuel and cotton are applied for a great many innocent purposes. Many nations are dependent on them for the conduct of inoffensive industries, and no sufficient presumption of an intended warlike use seems to be afforded by the mere fact of their destination to a belligerent port. The recognition in principle of the treatment of coal and other fuel and raw cotton as absolutely contraband might ultimately lead to a total inhibition of the sale by neutrals to the people of belligerent States of all articles which could be finally converted to military uses. Such an extension of the principle, by treating coal and all other fuel and raw cotton as absolute contraband of war, simply because they are shipped by a neutral to a non-blockaded port of a belligerent, would not appear to be in accord with the reasonable and lawful rights of a neutral commerce.

I am your obedient servant,

JOHN HAY.

Later in 1904 there was an exchange of views on the subject of the declaration of Russia between the Governments of Great Britain and the United States.

Mr. Choate to Lord Lansdowne.

American Embassy, London, June 24, 1904.

MY LORD:

Referring to our recent interviews, in which you expressed a desire to know the views of my Government as to the order issued by the Russian Government on the 28th of February last, "making every kind of fuel, such as coal, naphtha, alcohol, and other similar materials, unconditionally contraband," I am now able to state them as follows:

These articles enter into great consumption in the arts of peace, to

which they are vitally necessary. They are usually treated not as "absolutely contraband of war," like articles that are intended primarily for military purposes in time of war, such as ordnance, arms, ammunition, etc., but rather as "conditionally contraband"; that is to say, articles that may be used for or converted to the purposes of war or peace, according to circumstances. They may rather be classed with provisions and food-stuffs of ordinary innocent use, but which may become absolutely contraband of war when actually and especially destined for the military and naval forces of the enemy. The recognition in principle of the treatment of coal and other fuel and raw cotton as absolutely contraband of war might ultimately lead to a total inhibition of the sale by neutrals to the people of belligerent states of all articles which could be finally converted to military uses.

Such an extension of the principle, by treating coal and all other fuel and raw cotton as absolutely contraband of war simply because they are shipped by a neutral to non-blockaded port of a belligerent, would not appear to be in accord with reasonable and lawful rights of a neutral commerce.

I shall be glad to receive and transmit to my Government the views of His Majesty's Government on the same question, as soon as your lordship shall have formulated them.

I have, etc.

JOSEPH H. CHOATE.

Lord Lansdowne replied:

Foreign Office, July 29, 1904.

YOUR EXCELLENCY:

I have the honour to acknowledge the receipt of your note of the 24th ultimo, containing the views of the United States Government with regard to the Russian regulation of the 28th February last, in which every kind of fuel, such as coal, naphtha, alcohol, and other similar materials is declared to be absolutely and unconditionally contraband of war.

I have the honour to inform your Excellency, in reply to your request to be furnished with the views of His Majesty's Government on this subject, that the views of the United States Government, as expressed in your Excellency's note, are generally in accord with those which have been held and acted upon from time to time by His Majesty's Government. With reference, however, to the statement made in paragraph 7, as to the attitude of Great Britain in 1870 in regard to coal, I would observe that Her late Majesty's Government refused in that year to permit vessels to sail with coal to the French Fleet, not merely because they held that the character of the coal depended upon its destination, but because they held that steamers engaged to take

out cargoes of coal to the French Fleet in the North Sea would be in reality acting as storeships to that fleet.

It is, however, right that I should add that, in the altered conditions of modern maritime warfare and the ever-increasing importance of the part played therein by coal, His Majesty's Government propose to submit the whole question to careful and exhaustive examination at an early date, with the object of determining whether and in what respects the British rules, as hitherto acted upon, are in need of revision.

In these circumstances His Majesty's Government does not propose to make any formal protest at the present stage against Russian declaration in so far as the question of coal is concerned. They have, however, already entered a protest against the treatment of food-stuffs as absolutely contraband, and they have pointed out that they observe with great concern that rice and provisions will be treated as unconditionally contraband, a step which they regard as inconsistent with the law and practice of nations.

In that protest it was stated that His Majesty's Government does not contest that in particular circumstances provisions may acquire a contraband character, as, for instance, if they should be consigned direct to the army or fleet of a belligerent, or to a port where such fleet may be lying, or if facts should exist raising the presumption that they are about to be employed in victualling the fleet or forces of the enemy.

In such cases it is not denied that the other belligerent would be entitled to seize the provisions as contraband of war, on the ground that they would afford material assistance towards the carrying on of warlike operations.

They could not, however, admit that if such provisions were consigned to the port of a belligerent (even though it should be a port of naval equipment), they must, on that ground alone, be of necessity regarded as contraband of war.

In the view of His Majesty's Government the test appeared to be whether there are circumstances relating to any particular cargo to show that it is destined for military or naval use.

His Majesty's Government further pointed out that the decision of the prize court of captor in such matters, in order to be binding on neutral states, must be in accordance with recognised rules and principles of International Law and procedure.

They therefore felt themselves bound to reserve their rights by protesting at once against the doctrine that it is for the belligerent to decide that certain articles or classes of articles are, as a matter of course and without reference to the considerations above referred to, to be dealt with as contraband of war, regardless of the well-established

rights of neutrals; nor would they consider themselves bound to recognise as valid the decision of any prize court which violated these rights, or was otherwise not in conformity with the recognised principles of International Law.

I have, etc.

LANSDOWNE.

The position of Great Britain was also clearly stated in a communication to the British representative in Russia:[1]

It has been held by this country, and our officers have been so instructed, that the term "Contraband of War" includes only articles having belligerent destination and purpose. Such articles have been classed under two heads:

1. Those that are primarily and ordinarily used for military purposes in time of war, e. g., arms and munitions of war, military material, etc., articles of this kind being usually described as absolutely contraband.

2. Those that may be, and are, used for peaceful or warlike purposes, according to circumstances, such articles being usually described as conditionally contraband.

On August 30, 1904, the United States Government made known to its Ambassador at St. Petersburg its position on certain questions relating to contraband.

The letter is as follows:

No. 143.

Department of State, Washington, August 30, 1904.

His Excellency Robert S. McCormick, etc.,

St. Petersburg.

SIR:

I have the honour to acknowledge the receipt of your No. 176, of the 10th instant.

The Department has carefully considered the note of the Russian Minister for Foreign Affairs, dated July 27th last, a copy of which is enclosed with your despatch, with reference to the decision of the prize court in the case of the steamship *Arabia*, containing American cargo, seized by the Russian naval forces and sent to Vladivostok for adjudication.

As communicated to you by the minister, the decision of the Court

[1] Marquis of Lansdowne to Sir C. Hardinge, August 10, 1904. *Parliamentary Papers*, Russia, No. 1 (1905), p. 13.

was "that the steamer *Arabia* was lawfully seized; that the cargo, composed of railway material and flour, weighing about 2,360,000 livres, destined to Japanese ports and addressed to different commercial houses in said ports, constitutes contraband of war; that such cargo bound for Japanese ports should be confiscated as being lawful prize."

In communicating the said decision the minister observed, in response to the request of this Government for the release of the non-contraband portion of the cargo, that the question could only be decided through judicial channels on the basis of a decision of the prize court.

This is the first authentic information which the Department has received of the precise grounds on which the Prize Court decided to confiscate the railway material and flour in question. The judgment of confiscation appears to be found on the mere fact that the goods in question were bound for Japanese ports and addressed to various commercial houses in said ports. In view of its well-known attitude it should hardly seem necessary to say that the Government of the United States is unable to admit the validity of the judgment, which appears to have been rendered in disregard of the settled law of nations in respect to what constitutes contraband of war. If the judgment and the communication accompanying its transmission are to be taken as an expression of the attitude of His Imperial Majesty's Government, and as an interpretation of the Russian Imperial Order of February 29 last, it raises a question of momentous import in its bearing on the rights of neutral commerce.

The Russian Imperial Order denounces as absolutely contraband of war telegraph, telephone, and railway materials, and fuel of all kinds, without regard to the question whether destined for military or for purely pacific and industrial uses.

Clause 5, Art. X., of the Imperial Order denounces as contraband of war "all articles destined for war on land or sea, as well as rice, provisions, and horses, beasts of burden, and others (autres) capable of serving a warlike purpose, and if they are transported on account of or to the destination of the enemy."

The ambiguity of meaning which characterises the language of this clause, lending itself to a double interpretation, left its real intendment doubtful. The vagueness of the language, used in so important a matter, where a just regard for the rights of neutral commerce required that it should be clear and explicit, could not fail to excite inquiry among American shippers who, left in doubt as to the significance attributed by His Imperial Majesty's Government to the word "enemy" —uncertain as to whether it meant "enemy government or forces" or "enemy ports or territory"—have been compelled to refuse the shipment

of goods of any character to Japanese ports. The very obscurity of the terms used seemed to contain a destructive menace, even to legitimate American commerce.

In the interpretation of clause 10 of Art. V., and having regard to the traditional attitude of His Imperial Majesty's Government, as well as to the established rule of International Law, with respect to goods which a belligerent may or may not treat as contraband of war, it seemed to the Government of the United States incredible that the word "autres" or the word "l'ennemi" could be intended to include, as contraband of war, food-stuffs, fuel, cotton, and all "other" articles destined to Japanese ports, irrespective of the question whether they were intended for the support of a noncombatant population or for the use of the military or naval forces. In its circular of June 10 last, communicated by you to the Russian Government, the Department interpreted the word "enemy" in a mitigated sense, as well as in accordance with the enlightened and humane principles of international law, and therefore it treated the word "enemy," as used in the context, as meaning "enemy Government or forces" and not the "enemy ports or territory."

But if a benign interpretation was placed on the language used, it is because such an interpretation was due to the Russian Government, between whom and the United States a most valued and unbroken friendship has always existed, and it was no less due to the commerce of the latter, inasmuch as the broad interpretation of the language used would imply a total inhibition of legitimate commerce between Japan and the United States, which it would be impossible for the latter to acquiesce in.

Whatever doubt could exist as to the meaning of the Imperial Order has been apparently removed by the inclosure in your despatch of the note from Count Lamsdorff, stating tersely and simply the sentence of the prize court. The communication of the decision was made in unqualified terms, and the Department is therefore constrained to take notice of the principle on which the condemnation is based, and which it is impossible for the United States to accept as indicating either a principle of law or a policy which a belligerent State may lawfully enforce or pursue towards the United States as a neutral.

With respect to articles and material for telegraphic and telephonic installations, unnecessary hardship is imposed by treating them all as contraband of war, even those articles which are evidently and unquestionably intended for merely domestic or industrial uses.

With respect to railway materials, the judgment of the Court appears to proceed in plain violation of the terms of the Imperial Order, according to which they are to be deemed to be contraband of war only

if intended for the construction of railways. The United States Government regrets that it could not concede that telephonic, telegraphic, and railway materials are confiscable simply because destined to the open commercial ports of a belligerent.

When war exists between powerful States it is vital to the legitimate maritime commerce of neutral States that there be no relaxation of the rule—no deviation from the criterion—for determining what constitutes contraband of war lawfully subject to belligerent capture, namely, warlike nature, use, and destination. Articles which, like arms and ammunition, are by their nature of self-evident warlike use are contraband of war if destined to enemy territory, but articles which, like coal, cotton, and provisions, though of ordinarily innocent are capable of warlike use, are not subject to capture and confiscation unless shown by evidence to be actually destined for the military or naval forces of a belligerent.

This substantiative principle of the law of nations cannot be overridden by a technical rule of the Prize Court that the owners of the captured cargo must prove that no part of it may eventually come to the hands of the enemy forces. The proof is of an impossible nature, and it cannot be admitted that the absence of proof, in its nature impossible to make, can justify the seizure and condemnation. If it were otherwise all neutral commerce with the people of a belligerent State would be impossible; the innocent would suffer inevitable condemnation with the guilty.

The established principle of discrimination between contraband and non-contraband goods admits of no relaxation or refinement. It must be either inflexibly adhered to or abandoned by all nations. There is and can be no middle ground.

The criterion of warlike usefulness and destination has been adopted by the common consent of civilised nations after centuries of struggle, in which each belligerent made indiscriminate warfare upon all commerce of all neutral States, with the people of the other belligerent, and which led to reprisals as the mildest available remedy.

If the principle which appears to have been declared by the Vladivostok Prize Court, and which has not so far been disavowed or explained by His Imperial Majesty's Government, is acquiesced in, it means, if carried into full execution, the complete destruction of all neutral commerce with non-combatant population of Japan; it obviates the necessity of blockades; it renders meaningless the principle of the Declaration of Paris, set forth in the Imperial Order of February 29 last, that a blockade in order to be obligatory must be effective; it obliterates all distinction between commerce in contraband and non-contraband goods, and is in effect a declaration of war against commerce

of every description between the people of a neutral and those of a belligerent State.

You will express to Count Lamsdorff the deep regret and grave concern with which the Government of the United States has received his unqualified communication of the decision of the Prize Court. You will make earnest protest against it, and say that the Government of the United States regrets its complete inability to recognise the principle of that decision, and still less to acquiesce in it as a policy.

I have the honour to be, sir, your obedient servant,

JOHN HAY.

The American Ambassador on September 21 sent the following reply:

(No. 186.)

American Embassy, St. Petersburg, September 21, 1904.

SIR:

I have the honour to confirm my cablegram of the 19th, with reference to the attitude of the Russian Government on the subject of contraband of war, and to transmit to you a copy of a memorandum handed me by Count Lamsdorff, practically reiterating what he had said to me on former occasions with reference to any discussion of the facts or of the principle involved in the seizure and condemnation by the prize court at Vladivostok of that part of the cargoes of these two ships which were consigned to merchants in open Japanese ports.

Count Lamsdorff was not prepared to take any issue with me on the declarations and principles contained in your circular note (circular of June 10, 1904, printed ante) and your instructions, No. 143, of August 30 (printed ante), a copy of the former having been handed to him, and the contents of the latter having been transmitted to him practically in extenso, as well as the contents of your instruction on the subject of the seizure of the cargo of the *Arabia*.

Count Lamsdorff said, in addition to what I have already transmitted to you by cable, that to unconditionally accept as non-contraband all merchandise not universally accepted or described in their own rules as such, would open the door to contractors in Japan to import foodstuffs and other merchandise without limit for account of the Japanese Government, that is, on account of or in destination of the enemy. That the Russian Government could not but consider as contraband a cargo of flour consigned to a port at which was quartered a large body of troops, and that, extending this principle, the ultimate destination of cargo had to be taken into consideration, although its direct consignment might be to a merchant in an open port.

This statement, with a copy of the aide-memoire, which is herewith enclosed, will enable you to understand the position of the Russian Government at this time.

The only reply was that it meant, practically, abrogation of the principle "that the blockade, in order to be obligatory, must be effective," and relieved Russia of the necessity of maintaining one. To this the reply was that nobody would be so naïve as to consign merchandise not prima facie contraband, although intended for the enemy, to the destination of the enemy, substituting therefore a middleman in the shape of the merchant in the open port. He added here, as he repeated several times, that we would see that in the future there would be less ground for complaint and that it was far from the desire of the Russian Government to place any obstacle in the way of legitimate commerce with Japan, but that they would be compelled to take such steps as would be necessary to prevent supplies of any character ultimately intended for the use of the enemy from reaching their destination. Several notes written on the subject, as well as a circular note of June 10, had been handed Professor Martens, who considered the representation made therein when the case of the *Arabia* and *Calchas* came before the admiralty court of St. Petersburg.

The Russian Government admitted that provisions might be regarded as conditionally contraband.

The British Government expressed its approval and commented on the matter.

(*Sir C. Hardinge to Count Lamsdorff.*)

St. Petersburg, September 28 (October 11), 1904.

M. LE COMTE:

I duly reported to His Majesty's Government that Your Excellency had informed me that the Russian Government have, in consequence of the decision of the Commission appointed by Imperial Order under the Presidency of Professor Martens, to study the question of contraband of war, issued supplementary instructions to Naval Commanders and Naval Prize Courts, defining the interpretation of section 10 of Art. VI. of the Regulation of the 27th February last. According to the supplementary instructions, the conditionally contraband nature of rice and provisions, used for peaceful or warlike purposes according to circumstances, is admitted by the Russian Government.

I am now instructed by the Marquis of Lansdowne to inform Your

Excellency that His Majesty's Government desires to acknowledge the friendly spirit in which their representations in this matter have been met by the Russian Government. They learn with satisfaction that it is not intended to treat rice and provisions as unconditionally contraband of war, and they trust that Your Excellency's anticipation (which I mentioned to Lord Lansdowne), that the decision arrived at will tend to avoid difficulties in the future, may be realised.

His Majesty's Government note that, in the view of the Russian Government, such articles are not necessarily free from seizure and condemnation as contraband of war merely because they are addressed to private firms or individuals in the enemy's country, the Russian Government holding that they may, nevertheless, be in reality intended for the military or naval forces of the enemy.

While His Majesty's Government does not contend that the mere fact that the consignee is a private person should necessarily give immunity from capture, they hold, on the other hand, that to take the vessel for adjudication merely because the destination is the enemy's country would be vexatious and constitute an unwarrantable interference with neutral commerce. To render a vessel liable to such treatment there should, in the opinion of His Majesty's Government, be circumstances giving rise to a reasonable suspicion that the provisions are for the enemy's forces, and it is in such a case for the captor to show that the grounds of suspicion are adequate and to establish the fact of destination for the enemy's forces before attempting to procure their condemnation.

In bringing these views to Your Excellency's notice, I am to state that, for the reason mentioned, His Majesty's Government trust that the instructions now issued will be interpreted in a liberal and considerate spirit by the Naval Commanders and the Prize Court to whom they are addressed.

I am to add, at the same time, that His Majesty's Government cannot refrain from expressing their regret that the same principle has, so far, not been admitted in the case of certain other commodities enumerated in the Regulations issued in February last such, for example, as coal and raw cotton, which clearly appear to be susceptible of use for other than warlike purposes. They cherish, however, the hope that the views which His Majesty's Government have already expressed on this subject may receive favourable consideration at the hands of the Russian Government and that the principle of conditional contraband, which has been admitted by the Russian Government, may receive still further extension in its application.

I avail, etc.,

(Signed) CHARLES HARDINGE.

In consequence of the questions and protests, interpretations and modifications of the rules were made. In the *Journal de Saint Petersburg* of September 30, 1904, the following appeared:

In consequence of doubts which have arisen as to the interpretation of Art. VI., section 10, of the regulations respecting contraband of war, it has been resolved, as we are in a position to announce, that the articles in regard to which no decision has been taken shall be considered as contraband of war if they are destined for:

The government of the belligerent powers;

Their administrations;

Their army; or

Their purveyors.

In cases where they are addressed to private individuals these articles shall not be considered as contraband of war.

Vessels shall only be confiscated in cases where prohibited merchandise forms more than half of the cargo.

In the contrary case only the cargo shall be confiscated.

All possible measures have thus been taken to insure freedom of commerce to neutral powers.

It is to be hoped that the Powers will appreciate the considerable latitude which is at present allowed to the free movement of their commerce and will not give occasion to reproach them with abuses relative to the Regulations on Contraband of War (*Parliamentary Papers*, Russia, No. 1, 1905, p. 23).

The Russian rules relating to conditional contraband received further consideration by the British Government.[1] The following letter indicates the position taken:

Sir C. Hardinge to Count Lamsdorff.

St. Petersburg, October 9, 1904.

M. LE COMTE:

On the 16th of August I had the honour to communicate to Your Excellency the substance of a despatch which I had received from the Marquis Lansdowne, in which the views of His Majesty's Government were very clearly expressed on the subject of the treatment by the Russian Government as unconditional contraband of an extensive category of articles enumerated under sections 8 and 10 of Rule 6 of the Regulations published by the Russian Government on the 14th February of this year. In this statement of the views of His Majesty's

[1] *Parliamentary Papers*, Russia, No. 1 (1905), p. 26.

Government, Lord Lansdowne explained the grounds upon which it was impossible to admit the claims of the Russian Government, and defined the measures which His Majesty's Government would be reluctantly compelled to take in the event of the interests of British subjects suffering by the application of these rules.

It was with much satisfaction that I received on the 16th ultimo a verbal communication from Your Excellency to the effect that the principle of conditional contraband was admitted by the Russian Government, and that all the articles mentioned in paragraph 10 of Art VI. of the Rules of the 14th February, 1904, with the exception of horses and beasts of burden, had been recognised as articles of a conditionally contraband nature.

I have since had the honour to point out to Your Excellency that the principle of conditional contraband having been admitted by the Russian Government, the application of this principle could not be logically withheld from coal, which, though essentially contraband when used for warlike objects, has a much wider use for peaceful purposes, and, being manufactures, enjoys when so employed a perfectly innocent character.

In reply to my representation, Your Excellency has been so good as to inform me that the conclusions of the Ministry for Foreign Affairs upon the question of principle raised by me have been communicated to the Ministry of Marine for their consideration, and I can only hope that a solution of this question may be arrived at in accordance with international usage, and that the instructions already issued to Naval Commanders, and Prize Courts may be extended so as to include as conditionally contraband all articles of dual use when not destined for the belligerent forces of the enemy.

The new doctrine, which is in complete contradiction to the law and practice of nations sanctioned by international usage, and which is entirely contrary to the former views of the Russian Government, *viz.*, that coal and fuel of every kind are contraband, irrespective of their destination, and that the seizure of cargoes, or the vessels containing them, upon the ground that they include such articles is justifiable in International Law, is one which it is impossible for His Majesty's Government to admit. It has been suggested to me by Your Excellency that in view of the fact that Russian warships proceeding to the Far East are not allowed to purchase coal in British ports it could hardly be claimed that British merchant vessels should have the right to carry coal to the ports of the enemy, even if it is not destined for warlike purposes. The reply to this suggestion is obvious. An article of commerce may be so essential for hostile purposes that no warship should be supplied with it in neutral waters, and yet so

essential for the ordinary purposes of civil life that it should not be prevented from reaching the peaceful inhabitants of belligerent countries. The dual character of coal, as contraband of war, forms a very apt illustration of the above.

There is another aspect of this question to which I would invite Your Excellency's attention. From the enormous quantities of coal which arrive daily in Russia from Great Britain, for both peaceful and warlike purposes it is evident that the British trade in coal is of very great importance. It is equally certain that the importance of this trade is not confined to export to Russia, and that very large exports of coal to Japan, for purposes both of peace and war, take place. Your Excellency will, I am confident, admit that the fact of the Governments of Russia and Japan being at war is not in itself a sufficient reason why the peaceful commerce between Great Britain and commercial houses in Japan should be treated with such severity as to render commerce both dangerous and even prohibitive.

So, also, as regards raw cotton, which, by Imperial Order on the 21st April, was declared to be absolute contraband of war. Your Excellency may not be aware that British India is by far the largest importer of raw cotton into Japan, the quantities imported in 1901 and 1902 being more than double those imported from the United States of America or from any other country, while the value of raw cotton sent to Japan from India in each of above mentioned years amounted to nearly 40,000,000 rubles and one-half of the total value of all the cotton imported into Japan. The quantity of raw cotton that might be utilised for explosives would be infinitesimal in comparison with the bulk of the cotton exported from India to Japan for peaceful purposes, and to treat harmless cargoes of this latter description as unconditionally contraband would be to subject a branch of innocent commerce which is specially important in the Far East to a most unwarrantable interference.

As I have already had the honour of explaining to Your Excellency, His Majesty's Government have no desire to place obstacles in the way of a belligerent desiring to take reasonable precautions in order to prevent his enemy from receiving supplies, but they cannot admit that the right of adopting such precautions implies a consequential right to abolish by a stroke of the pen long-established distinction between articles which are conditionally and those which are absolutely contraband of war, and to intercept at a distance from the scene of operations and without proof of their ultimate destination a numerous category of articles in themselves of an innocent description and largely dealt in by neutral Powers, but which that bel-

ligerent may have announced his intention of regarding as unconditional contraband of war.

The principle of conditional contraband has already been recognised by the Russian Government, and it only remains to extend its application to coal, cotton, and other articles which may be used for peaceful or warlike purposes according to circumstances. Such a measure would be consistent with the law and practice of nations and with the well-established rights of neutrals. While maintaining the rights of a belligerent, the rights of neutrals would be respected, and the source of a serious and unprofitable controversy would be removed.

In making these representations to Your Excellency in accordance with the instructions which I have received from the Marquis of Lansdowne, I am convinced that you will give this matter the very serious consideration which is its due, and I trust that Your Excellency will be in a position to inform me shortly that a solution has been arrived at which may prove satisfactory to both Governments.

I avail, etc.

CHARLES HARDINGE.

In reply to the British Ambassador's request the following interpretation was given by Russia:[1]

In consequence of doubts which have arisen as to the interpretation of Art. VI., section 10, of the Regulations Respecting Contraband of War, it has been resolved by the Imperial Government that the article capable of serving for a warlike object, and not specified in sections 1 to 9 of Art. VI., as well as rice and foodstuffs, shall be considered as contraband of war, if they are destined for:

The Government of the belligerent Power;
For its administration;
For its army;
For its fortresses;
For its navy;
For its naval ports; or
For its purveyors.

In cases where they are addressed to private individuals these articles shall not be considered as contraband of war.

In all cases horses and beasts of burden shall be considered as contraband of war.[2]

In interpreting a contract entered into just before the Russo-Japanese War, and involving the definition of contra-

[1] *Parliamentary Papers*, Russia, No. 1 (1905), p. 24. [2] *Ibid.*, p. 27.

band, the following statement was made by Chief-Justice Berkeley:

The contract was made in Hongkong, and therefore in the absence of evidence to the contrary which I could act upon the parties must be taken to have used the expression "contraband of war" in the sense in which it is understood in British Courts of law, which is its sense in International Law. It cannot be successfully contended that provisions would be regarded by British Courts of law as unconditional contraband of war, or that there is any likelihood that they will ever take that view. Had this court been asked at any time between the signing of the charter party on the 10th of February, 1904, and the issuing of the Russian declaration to construe the meaning of the words "contraband of war" it cannot be doubted that it would have excluded provisions from the category of unconditional contraband. It is contended, however, that the court ought to place a different meaning on that expression, after, and in view of, the terms of the Russian declaration, inasmuch as Russia, being a sovereign independent Power, has a prerogative right to declare whatever she pleases to be contraband of war in any war in which she may be engaged, and the effect of the Russian declaration being to make provisions unconditionally contraband, the master of the ship *Prometheus* was excused from loading them on his ship. In this contention I am unable to concur. In the view which I take of the effect of the Declaration under the Treaty of Paris of 1856, and of the agreement undertaken by the several powers signatory thereto given in protocol No. 24 not to depart from the principles enunciated in the Declaration, I think that Russia was not at liberty to declare provisions unconditional contraband of war, and that her declaration in that respect could not affect the contract between the parties to this charter party, even supposing it could be held that contraband of war means, as used in the charter party, whatever Russia may consider as such, for Russia, having been a party to the solemn declaration of "fixed principles" under the Treaty of Paris, was not at liberty to disregard those principles and was therefore bound to recognise and act upon the generally accepted rule of international law that provisions are not unconditional contraband. (The *Osaka Shosen Co. vs.* The *Prometheus.*)

It is evident that no unvarying list of articles contraband of war can be made. The progress of invention may make an article previously entirely innocent exceedingly dangerous to

the belligerent if he allows it to be freely transported. The question always is, how essential is the article for carrying on the war? If it is essential, it may be declared contraband, e.g., in many wars sulphur and saltpetre have led the list of contraband because essential in the making of gunpowder and not readily obtained in all places. Charcoal, on the other hand, while essential, is readily obtainable and not classed as contraband.

The change in the method of warfare has made treatment of coal a matter of much moment. France did not regard coal as contraband in 1859 or in 1870, and other States took the same position. It may, however, easily become contraband by destination under the regulations of these States.

Certain coal, such as the Cardiff and Pocahontas, which are peculiarly adapted for use on war vessels, will naturally be more liable to be treated as contraband than ordinary domestic coals.

G. G. Phillimore has said of the position of Russia in the Russo-Japanese War:

> **The Russian attitude with regard to coal is in direct conflict with her declaration of 1884, at the West African Conference, that she would never recognise coal as contraband. While no doubt a State may define contraband differently on different occasions, to suit the particular circumstances of the warfare it is engaged in, it cannot expect other States to acquiesce in its refusal to recognise the general rules governing the subject which it has formerly accepted and which stand on a basis of general acceptance in practice.**[1]

The Russian Prize Court at Vladivostock in 1904 condemned flour and railway materials consigned to merchants at Japanese ports on board the German vessel *Arabia*, and took similar action in regard to the British steamer *Calchas*. The goods on these vessels were consigned by United States merchants.

Secretary Hay protested against the seizure and condemnation, saying that—

[1] *The Law Magazine and Review*, No. 30, p. 79.

In view of its well-known attitude it should hardly seem necessary to say that the Government of the United States is unable to admit the validity of the judgment which appears to have been rendered in disregard of the settled law of nations in respect to what constitutes contraband of war.

Two days earlier the British Government had stated that proof is necessary "that the goods are intended for the belligerent's naval or military forces before they can be considered as contraband."

The appeal in the case of the decision on the steamer *Calchas* was taken to the High Admiralty Court at St. Petersburg. That court handed down its decision on June 13, 1905. The decision does not directly recognise the category of conditional contraband; but, in justifying the seizure of the cotton and timber, maintains by an extended argument that there was fair evidence that the cotton was destined for the arsenal at Kobe, and that the timber was destined for Japanese military railways and telegraph lines, thus introducing the principle of destination for enemy military use as a ground of condemnation.

In the report of the British Royal Commission on Supply of Food and Raw Material in Time of War is enunciated the following opinion formulated by Professor Holland:

Provisions in neutral ships may be intercepted by a belligerent as contraband only when, being suitable for the purpose, they are on their way to a port of naval or military equipment belonging to the enemy, or occupied by the enemy's naval or military forces, or to the enemy's ships at sea, or when they are destined for the relief of a port besieged by such belligerent.

Sect. III. The Bean-Cake Question.

Before entering into this question, the Chinese Regulations Concerning Contraband of War will be mentioned.

According to the *Jiji's* Shanghai correspondent, the Chinese Customs at Shanghai have issued the following proclamation:

"In compliance with the instructions of the Inspector-General of the Imperial Maritime Customs, the following regulations are promulgated and notified to the parties concerned:

"1. Contraband of war consisting of purely military requisites, such as arms, ammunitions, etc., bound for a port of the belligerent countries or of the area of hostilities, shall be discharged and detained until the end of the war.

"2. Contraband of war consisting of ordinary commodities, such as flour, clothes, etc., may be transported, at the risk of the owners, to the ports of the belligerent countries, there being no need of interference on the part of the Customs. But in case the goods are bound for the scene of the war, they shall be treated as military stores and landed and detained until the end of the war.

"3. In the event of the necessity arising of landing any cargo passing through Chinese ports, the same will be landed and stored at the expense of the owners. The storage of the goods will be controlled by the Customs."

The Peking correspondent of the *Jiji* reports that the British and the American Ministers to China, on behalf of the merchants of their respective countries, have recently lodged a protest with the Chinese Foreign Office to the effect that these merchants have been subjected to serious inconveniences through the excessively strict application of the regulations for contraband of war, an application which practically amounts to the prohibition of the shipment of the principal export articles intended for Japan and Russia. The Chinese Government, in reply, stated that it could not but strictly apply the said regulations to the exports for the two belligerent countries owing to the threatening attitude of M. Lessar, Russian Minister, who, in a note recently forwarded to the Peking authorities, alleged that the latter always favoured Japan by acquiescing in the exportation of contraband of war to Japan or by encouraging the mounted bandits, and even declared that it would be better for China to declare war against Russia.

Here the Affair Concerning the Exportation of Bean-Cake and Eggs will be fully described:

At the end of March, 1904, a steamer chartered by the Chefoo branch of the Mitsui Bussan Company was about to leave for Japan with a cargo of bean-cake purchased by the branch, when the local customs authorities ordered the vessel to postpone her departure, stating that they were then asking the opinion of the central authorities as to whether bean-cake

should be regarded as contraband or not. The *Asahi's* correspondent understands that the customs authorities were in secret communication with the Russian Consul at Chefoo in this connection, who seems to have submitted the question to the Russian Minister at Peking, who again, after referring the matter to St. Petersburg, communicated to Wai-wu-pu to prohibit the exportation of those articles. The Chefoo Taotai has also asked the Chinese Foreign Office for instructions in the matter, but no answer has yet been received by him nor by the local customs authorities. Meanwhile, the Russian Consul insists that bean-cake, being available for fodder, is contraband of war, while the Japanese Consul, Mr. Midzuno, claims that there is no reference whatever in the Chinese Neutrality Regulations regarding that article.

At the same time, the Shanghai Customs also prohibits the exportation of beans, eggs, wheat, bran, and some other provisions to Japan.

The following is the correspondence from Shanghai:

The commissioner of Customs at Shanghai has prohibited the exportation of beans, eggs, and some other provisions to Japan. This undesirable step taken by the Commissioner of Customs appears to have come from the following two facts: 1. That it is provided in the proclamation of neutrality issued by China that provisions are contraband. 2. That both Russia and Japan declared provisions as contraband when they are destined to the hostile navy or army. But the provisions being exported to Japan cannot be said simply to be used for navy or army.

This position held by the Chinese Government is quite unreasonable. The following opinion which appeared in a Japanese paper is worth quoting here:

"True, Russia in her declaration includes beans, bean-cake, and eggs in the list of what she considers contraband, but that is a declaration that Russia has made to suit herself, and is no more binding on China than on the man in the moon. China's motives may be to uphold her neutrality; but as a

neutral country she should be guided in her conduct by fair and just principles internationally recognised. It is consequently outrageous that she should take for her model an example set by a belligerent, who would naturally formulate rules that would bear most unfavourably on her enemy. If she would imitate a belligerent's action, China should have followed Japan. Japan, by her proclaimed rules, regards arms, ammunition, and other articles that may be used for war purposes, as contraband of war only when they are to be transported through, or destined for, the enemy's territory, or for the enemy's army and navy, while articles of food and drink are not treated as contraband at all, except when they are destined for the enemy's forces, and also when their destination shows them to be for the enemy's use. Nothing could be more just and fair than this rule, if observed by a belligerent. Everybody knows that there is no possible way of using bean-cakes for war purposes, they being only valuable as fertilisers. If China wants to be so scrupulous about maintaining neutrality, this journal would point out that it is far more urgently incumbent on her to take effective steps to drive out Russians from, and forbid them levying war supplies within, her declaredly neutral territory.

On the 5th of April, 1904, Consul Midzuno at Chefoo informed the Japanese Government that if its export were stopped during the war, agriculture, which nowadays depends on the bean-cake as a fertiliser, will suffer enormously.

Thus the Chinese prohibition of the exportation of the above-mentioned goods has evoked much opposition from the Japanese, English, American, and German merchants there. Mr. Odagiri, Japanese Consul-General at Shanghai, on the 8th inst. lodged a protest in this connection with the Chinese authorities, who replied that they would reconsider the matter in the case of eggs, but that with regard to the remainder of the goods the authorities had acted under the express instructions of the Central Government, and could not therefore comply with the request of the Japanese Consul-General.

Thereupon the Japanese Government lodged a strong protest with the Chinese Government.

Several times the Japanese Minister at Peking saw Prince Ching of Wai-wa-pu, and urged him to revoke the prohibition altogether.

As a consequence of the negotiations, Wai-wa-pu sent an official reply to our government on the 30th of April, stating (as it stands in the official note) that bean-cake and iron, being ordinary articles of merchandise, can be exported as usual, except to the theatre of war, and that necessary instructions had been given to the local authorities concerned.

The following is the notification of the Shanghai Customs relating to this affair:

Customs Notification. No. 610.

Contraband of War.

Such products as beans, beancake, bran, sesame seed, sesame seed cake, cotton seed, and eggs are now allowed shipment to Japanese or Russian territory not in the fighting sphere.

In every case, however, when shipment is permitted, formal consular certificates are required, certifying that the goods are not destined for the theatre of war, and stating clearly that they are shipped at the owner's risk.

This ruling does not affect produce arriving from Newchwang under bond.

(Signed) H. E. Hobson,
Commissioner of Customs.

Customs House, Shanghai, 27th April, 1904.

Customs Notification. No. 612.

Treatment of Contraband of War En Route to Fighting Sphere or Ports of Belligerent States.

The following rules are published by order of the Inspector-General of Customs for the information of all concerned:

1. If the contraband consists of purely warlike supplies, such as arms and ammunition, and the vessel is bound to a port in either of the belligerent States or to the fighting sphere, the contraband must be landed and cannot be permitted to go forward until the war is ended.

2. If the contraband consists of ordinary commodities which all

classes require, such as bread stuffs, etc., it need not be interfered with, but may go forward to a port in either belligerent State at the owner's risk; if bound to a fighting sphere, it must be discharged in the same way as warlike supplies (1) and await the end of the war.

3. Should it be necessary to thus land and detain anything passing through a Chinese port in transit, it must be landed and stored by the consignee of the ship at the owner's expense, but under Customs control.

H. Elgar Hobson,
Commissioner of Customs.

Customs House, Shanghai, 7th May, 1904.

The Japanese authorities have also received a telegram from Mr. Midzuno, Japanese Consul at Chefoo, to the effect that the following agreement has been entered into between the Japanese Consul and the Customs authorities at that port:

(1) That prior to the exportation of bean-cake from Chefoo, either cash, or a guarantee by a provincial bank or by a Chinese merchant of good standing, shall be deposited by the exporter with the Customs.

(2) That whenever bean-cake is exported to a Japanese port, the Chinese Consul at that port shall make inquiries regarding its destination, and that in case his inquiries reveal the correctness of its registered destination, the consul will at once communicate the matter to the Chefoo Customs, so that the deposits may be refunded.[1]

Sect. IV. About Rice.

During the hostilities between France and China there arose some difficult questions, relating as to whether rice is contraband or not.[2]

During the late war there took place an interesting case concerning rice—the *Prometheus* case. The statement of the case being very concisely treated in Part III., Chapter I., is also omitted here.

Sect. V. About Tea.

On the 8th of March, 1904, the German Minister at Tokyo wrote a letter to the Japanese Foreign Minister, Baron Ko-

[1] The *Japan Times*, May 2, 1904.

[2] See the Author's *Hostilitiés entre la France et la Chine en* 1884–1885, *et Etude des lois de Neutralité au Japon pendant ces Hostilité*, 1901.

mura, asking whether provisions shipped to a Russian port would be considered under the Japanese Regulations now in force as being contraband goods, even if not destined for the use of the enemy's army or navy, and in the special case under consideration, whether tea shipped from China to Odessa and Nikolyewsk would be regarded as contraband of war.

Thereupon Baron Komura referred to the Minister of the Navy, asking if it was better not to consider tea destined to Odessa from Hankow, China, as contraband, except that which may be proved to be for the use of enemy's army or navy, and that if this opinion be approved, an instruction to this effect should be issued to the naval authorities.

This reference was sent on March 9th, 1904, and on that day the Minister of the Navy answered that there was no objection in his department, and that an instruction in this sense would soon be issued.

On the 18th of April, 1904, Mr. Yang, Chinese Minister to Tokyo, sent a letter to Baron Komura, asking whether tea was considered under Art. II. of the Japanese Naval Instructions as being contraband goods or not, to which the next day Baron Komura replied negatively, adding that there was an exception of that destined for use of the enemy's army and navy.

On the 22nd of May, 1904, Baron Komura despatched instructions to the Japanese Consul Eitani at Hankow to the effect that tea was considered contraband according to the Naval Instruction No. I. of February 10th of that year, but that that would be exported from Hankow to European Russia and Odessa would be treated as non-contraband goods, except such as may be proved to be for the use of the enemy's army or navy.

In the same month of the same year, Herman Kobritz, an Austrian subject and merchant in Hamburg, applied to Mr. Odagiri, Japanese Consul-General at Shanghai, through their Consul-General, for permission to ship about 150,000 cases of Chinese tea from Hankow via Nagasaki to Nikolajewsk on the Amur. The Austrian Consul-General visited Mr. Odagiri with

Kobritz, and told him that these cases of tea would be transported from Nikolajewsk to Moscow in European Russia. Thereupon, Mr. Odagiri sent a letter to Baron Komura on the 21st of May, giving these details in full, and adding a copy of the note of Kobritz, to ask whether the petition would be adopted by the Japanese Government.

The note is as follows:

Herman Kobritz, the Austrian subject, merchant in Hamburg, applied for permission to ship about 150,000 cases of Chinese tea from Hankow via Nagasaki to Nikolajewsk, on the Amur. He gives the most positive asurance that the whole quantity, as mentioned above, would be forwarded in transit from Nikolajewsk to Moscow by steamer up the Amur river, and then by rail.

The purpose of the intended transaction is as follows: The duty payable at the Russian Custom Houses in Europe, according to Sec. 20 of the Russian Customs Tariff, amounts for tea (leaves and flowers) per 16 Kilogram-pud to Rubles 31.50 per case of about 130 Russian lbs. to Rubles 102.35. For brick-tea per 16 Kilogram-1 pud to Rubles 19.50 per case of about 2000 Russian lbs. to Rubles 97.50 in case. However, on tea that had been sent to Moscow via Nikolajewsk and Irkutsk—as it used to be done before the outbreak of war—the duty charged at the Customs in Irkutsk, according to Sec. 20, Alinea 1, page 6 of the Tariff, only amounted to for teas (leaves and flowers) per 16 Kg.-1 Pud to Rubles 19.50 per case of about 130 Russian lbs. to Rubles 63.35; for brick-tea to Rubles 3.75 and Rubles 18.75, respectively.

By using the cheaper route via Siberia, and thus avoiding the higher rate of duty, a very considerable gain would be realised, which for about 50,000 cases flower-tea @ 39 Rubles per case would amount to Rubles 1,950,000, and for 100,000 cases brick-tea @ 78.75 Rubles per case to Rubles 7,875,000, or a total gain of Rubles 9,825,000.

The following facts and remarks will show beyond doubt that the exclusive aim in projecting the above transaction is merely to gain the difference in the rates of duty.

(*a*) According to advices from Moscow, large quantities of tea are stored at Port Arthur, Dalny, and Kharbin, which cannot reach their destination by rail, and are being sold at auction at much lower prices than the original cost.

(*b*) An article to the same effect is contained in the *Shanghai Mercury* of the 16th of May, 1904.

(*c*) Any amount of tea may be forwarded to Manchuria by land via Kiachta.

(*d*) Finally, Chinese tea may be imported duty free into Manchuria by land over several other routes.

The route via Nikolajewsk could only be availed of during the months of June, July, and August, and even in that period there is usually, during at least six weeks, low water in the Amur River, greatly impeding the transport of merchandise.

As the scheme is exclusively a trade operation, and does not tend towards supplying the Russian troops with tea, it is hoped that the Imperial Japanese Government, who certainly could not have had the intention of interfering with trade and commerce in general, would comply with an humble request to be allowed to carry the above quantities of tea to Nikolajewsk without risk of seizure.

(Signed) HERMANN KOBRITZ.

Shanghai, 19th May, 1904.

This letter was received on the 26th by Baron Komura, and his reply was despatched next day in the sense that tea would not be confiscated except in the case of Art. II. of Naval Instruction, and it not being examined and decided whether it applies to that article or not, the Government could not give permission previously.

Sect. VI. About Kerosene Oil.

In the Order of the Navy Department concerning Contrabands on Feb. 10, and in the Art. XIV. of the Japanese Prize Regulation, kerosene oil is not mentioned in the list of goods. So, on Feb. 27, the Italian Minister sent a note, asking whether the oil should come in the category of contrabands.

On the 9th of February, 1904, Japan modified its list of the articles of contraband of war, and sent the following letter to Italian Minister at Tokyo:

Traduction.

MONSIEUR LE COMTE:

No. 3. Par ma lettre du 29 Février, 1904, j'ai eu l'honneur d'informer la Légation Royale que le Gouvernement Impérial ne considérait pas le pétrole comme contrebande de guerre.

Ainsi qu'il vient d'être notifié aujourd'hui par l'Instruction No. 1 du Ministerè de la Marine, une modification est portée aux articles de contrebande de guerre. Au paragraphe 2 de l'Instruction No. 1 du

Ministère de la Marine du mois de Février, 1904, le mot "houille" est remplacé par les mots "houille et autres combustibles."

Par suite de cette modification le pétrole sera désormais considéré comme contrebande de guerre au cas du paragraphe de l'Instruction susmentionée.

Veuillez agréer, Monsieur le Comte, des nouvelles assurances de ma très haute considération.

(Signé.)

Son Excellence Monsieur le Comte Vinci, Envoyé, etc.

On the 6th of February, 1905, the German Minister also sent a letter to our Foreign Minister, requesting to be given a certificate by our Government for export of kerosene oil.

This request was refused by the Japanese Government, and the Japanese Foreign Minister replied on the ground that a modification was put on the articles of contraband of war by the Instruction No. 1, and in paragraph 2 of the Instruction No. 1 of Minister of the Navy of February, 1904, the word "coal" was replaced by the words "coal and other combustibles," so that kerosene oil will be included in the articles of contraband in such a case.

Sect. VII. About Cotton.

There are very few reports available for a chapter on cotton as contraband, owing to the scarcity of cases.

On the 13th of May, 1904, Reuter announced that Russia had declared cotton to be contraband, because it is used in the manufacture of explosives.

It was stated that China had declared that she would not regard raw cotton as contraband of war. The Russians having included cotton in their list of contraband articles, the Japanese cotton mills were almost cut off from the supply of the raw material. Another article appeared in the newspapers of the 18th of August, to the effect that the Tokyo Chamber of Commerce had petitioned the Foreign Office and the Department of Agriculture and Commerce with a view to relieving the cotton spinners.

Some newspapers of the 27th of May, 1905, announced that the finding of the Russian Admiralty Court treating cotton as contraband was likely to give rise to serious negotiations with the British and American Governments. It appears from this that it was not only Japan who was cut off from a supply of cotton, who was distressed, but also Great Britain and the United States of America were much distressed and embarrassed from the diminution of demands.

PART V.

DECISIONS OF THE JAPANESE PRIZE COURTS.

CHAPTER I.

GENERAL STATEMENTS.

During the Russo-Japanese War the Japanese warships captured many Russian and neutral vessels, which were brought to the ports of adjudication in Japan. Japan established special courts for prize cases, two in number, one at Sasebo, near Nagasaki, and the other at Yokosuka, near Yokohama. Above these two, a Higher Prize Court was established in Tokyo.

Japan adopted the German system in organising these courts, while she adopted English principles and some American rules in making Prize Law, as will be seen in reading through Japanese Prize Court Law and Japanese Prize Regulations, etc. (See Appendix.)

Sect. I. Japanese Prize Court Regulations, and the Organisation of the Japanese Prize Courts.

On the day when the late war was declared by Japan the following ordinance was issued:

Imperial Ordinance establishing Prize Courts and a Higher Prize Court (Ordinance No. XXVII., promulgated on the 10th of the 2nd month of the 37th year of Meiji).

Prize Courts and a Higher Prize Court are hereby established.

The Prize Courts shall sit at Sasebo and Yokosuka. (The words "and Yokosuka" were added by Imperial Ordinance No. LVI. of the 37th year of Meiji.)

This ordinance takes effect from the date of promulgation.

On March 3rd the amendment of the Prize Court Regulations, which has been approved by the Privy Council, was published in the *Official Gazette.*

The regulations are as follows:

PRIZE COURT REGULATIONS.

Promulgated by Imperial Ordinance No. 149; 8th month, 27th year of Meiji (August, 1894).

Amended by Imperial Ordinance No. 55; 3rd month, 37th year of Meiji (March, 1904).

Amended by Imperial Ordinance No. 41; 2nd month, 38th year of Meiji (February, 1905).

CHAPTER I. Organisation and Power of Prize Courts and the Higher Prize Court.

ART. I. Cases of capture shall be adjudicated in the first instance by a Prize Court and in the second instance by the Higher Prize Court.

ART. II. There shall be appointed to every Prize Court a President and eight Councillors.

The President of a Prize Court shall be appointed from judges of "Chokunin" rank.

The Councillors of a Prize Court shall be appointed from the following:

1. Judges;
2. Navy Flag Officers;
3. Councillors and Enquirers of the Navy Department;
4. Councillors of the Legislative Bureau;
5. Councillors of the Foreign Department, Secretaries of the Foreign Department, and diplomatic and consular officers.

ART. III. There shall be appointed to the Higher Prize Court a President and eight Councillors.

The President of the Higher Prize Court shall be appointed from Privy Councillors.

One of the Councillors of the Higher Prize Court shall be a Privy Councillor; two shall be navy flag officers; three, judges of the Court of Cassation; one, the Director of the Legislative Bureau; and one, the Director of the Bureau of Political Affairs of the Department for Foreign Affairs.

ART. IV. The President of a Prize Court, or of the Higher Prize Court, shall supervise the affairs of the court under his charge; shall

preside at trials; or in case he is not able to be present, may nominate a chairman from among the Councillors of the Court.

ART. V., 1. There shall be appointed to a Prize Court three Public Procurators, and two to the Higher Prize Court.

Public Procurators shall be appointed from among Enquirers, Public Procurators of law courts, and higher Civil Officers.

ART. V., 2. There shall be appointed to the Higher Prize Court two officers of "Sonin" rank, who shall manage the general affairs of the Court, and whose official classes and salaries shall be like those of departmental secretaries.

ART. VI. The President, Councillors, and Public Procurators of the Higher and other Prize Courts shall be appointed on the recommendation of the Prime Minister.

ART. VII. There shall be attached to each Prize Court and to the Higher Prize Court a force of clerks.

Clerks shall be appointed by the President from among officials of "Hannin" rank and others.

ART. VIII. At trials before a Prize Court there must be present in consultation the Presiding Judge and at least four Councillors, two of whom shall be those appointed from judges of law courts.

At trials before the Higher Prize Court there must be present in consultation the Presiding Judge and at least six Councillors.

ART. IX. The opening and closing of the Higher and other Prize Courts shall be decreed by Imperial Ordinance.

The Higher Prize Court shall sit at Tokyo. The location of other Prize Courts shall be decreed by Imperial Ordinance.

CHAPTER II. Procedure of Trial of Cases of Capture.

ART. X. The commanding officer of a vessel which has seized a prize, shall take it to a port where there is a Prize Court, or shall order his representative to do so. On arrival at the port, the officer shall deliver the prize to the Prize Court together with the statement of capture. In case it is impossible to bring the prize to port, however, he may deposit only the statement of capture.

The statement of capture shall contain the reason the capture was made and all facts showing the propriety of the act, and shall be accompanied by all the books and papers received from the master or other members of the crew of the captured vessel, or found within it.

ART. XI. On receiving the statement prescribed in Art. X., the President of the Prize Court shall nominate a Councillor to take charge of the case.

The Councillor so nominated shall immediately open the docu-

ments in the presence of the commanding officer or his representative and the master of the captured vessel, and shall prepare an inventory of them.

After the preparation of the inventory, the Councillor shall inspect the captured vessel and cargo, and shall prepare a minute inventory of the goods in the presence of the master.

In case the captured vessel has not been brought into port, the previous clause may not be conformed to.

ART. XII., 1. The Councillor in charge of the particular case shall hear the statements of the master and crew of the captured vessel, and, if he thinks it necessary, also those of the crew of the capturing vessel and of the passengers of the captured vessel, and shall order the clerk to record them.

ART. XII., 2. The Councillor in charge of the particular case may, if he thinks it necessary, order experts to give their opinions on certain points which he shall designate.

ART. XIII. The Councillor in charge of the particular case, when he has ascertained the facts which he thinks necessary to decide whether the whole or part of the prize should be condemned or released, shall prepare a report, which he shall deliver to the Public Procurators together with the statement of capture and documents annexed to it.

ART. XIV. The Public Procurators shall frame their opinions concerning the adjudication of the case, and shall submit them to the Prize Court together with all the documents which they have received.

The Public Procurators, when they think it necessary, may request the Councillor in charge of the particular case to investigate certain facts which they shall designate.

ART. XV. In case the opinion of the Public Procurators favours the immediate release of the prize, and the Court considers it reasonable, the Court shall prepare a decision of immediate release and deliver it to the Public Procurators.

ART. XVI. In case the opinion of the Public Procurators favours the condemnation of the prize, or in case the Prize Court disapproves an opinion of the Public Procurators in favour of immediate release, the Court shall publish an advertisement in the *Official Gazette* and two foreign newspapers published in the Empire, stating that the interested parties may submit petitions in writing within thirty days, reckoning from the next day after the publication of the advertisement.

In case no petition is filed within the period, the Prize Court shall immediately proceed to trial. If, however, the Public Procurators so request, the Court shall dispense with the proceeding of trial

and give their decision immediately, and deliver it to the Public Procurators.

ART. XVII., 1. In a petition the grounds for making it shall be stated, and it shall be accompanied by documents and articles in evidence.

A petitioner may appoint a counsellor at law of the Empire, but no other, as his advocate.

ART. XVII., 2. When a petitioner or his advocate has no residence at the place where the Prize Court is situated, he shall select a temporary residence there to receive delivery of documents, and shall notify the Court of it.

In case such notification is not made, all documents shall be despatched by mail, and in this case all the periods prescribed in these Regulations shall be reckoned from the day on which the documents were posted.

ART. XVIII. When a petition is filed within the period allowed, oral trial shall be held on a designated day and hour, and the statements of the Public Procurators and of the petitioner shall be heard.

In case the petitioner is absent without permission on the day designated for oral trial, the trial may be opened without him.

When the oral trial is finished, a decision shall be drawn up, and shall be announced immediately or on a designated day. The presence of the petitioner is not, however, necessary on that day.

ART. XIX. When the Prize Court considers it necessary to take further evidence before giving decision, it may order the Councillor in charge of the case to make investigation.

The Public Procurators and petitioner may produce any new facts or evidence in the period before a decision is given.

In the above cases, the Prize Court may hold an oral trial again, if it considers it necessary.

ART. XX. In addition to the provisions of the above articles, the Prize Court shall make rules governing the procedure of trial.

ART. XXI. The Public Procurators or the petitioners may file protests before the Higher Prize Court against the decisions of Prize Courts.

ART. XXII. The period allowed for protest is twenty days, reckoning from the next day after the announcement or despatch of the decision.

ART. XXIII., 1. Protests shall be made by filing with the Prize Court a document containing the principal points of the protest and reasons for them.

The protest of a petitioner must be signed by a counsellor at law of the Empire.

ART. XXIII., 2. The Prize Court shall reject a protest that does not conform to the form prescribed, or one filed after the lapse of the period allowed.

In the case of a protest not conforming to the form, the Prize Court may order correction if such irregularity consist of unimportant matter, such as date, address, etc.

ART. XXIV., 1. Except in case of rejection according to the preceding article, the Prize Court shall send a copy of the petitioner's protest to the Public Procurators or of the Public Procurator's to the petitioner, and shall order an answer to be filed within a period of ten days.

The protest of a petitioner mentioned in the preceding clause must be signed by a counsellor at law of the Empire.

ART. XXIV., 2. A Prize Court may, if it thinks it necessary, extend the periods mentioned in Arts. XVI., XXII., and XXIV.

ART. XXV. When the period allowed for filing an answer has elapsed, the Prize Court shall forward to the Higher Prize Court all the documents concerning the protest.

When the Higher Prize Court thinks that further examination of facts or taking of evidence is necessary, it shall return the documents mentioned in the preceding clause to the Prize Court, and order it to make the examination.

The Prize Court shall order the Councillor who has charge of the case to make the examination mentioned in the preceding clause, and before forwarding the documents to the Higher Prize Court, shall show them to the Public Procurator and the petitioner.

ART. XXVI., 1. The Higher Prize Court shall give its decision according to the documents, and shall send a copy of the decision to the Public Procurator of the original Prize Court and to the petitioner.

ART. XXVI., 2. When decisions of Prize Courts or of the Higher Prize Court take effect, the gist of them shall be published in the *Official Gazette.*

ART. XXVI., 3. In Prize Courts and the Higher Prize Court the Japanese language shall be used.

In the examination of any persons who are not acquainted with the Japanese language, interpreters may be employed.

ART. XXVII. The Higher Prize Court shall make rules governing the procedure of trials before it.

ART. XXVIII. Condemned prizes shall be the property of the State.

ART. XXIX. Prize Courts shall entrust vessels and goods captured to the charge of the Naval Authorities until the time of execution of the decisions.

The Naval Authorities shall take charge of vessels and goods mentioned in the preceding clause under rules prescribed by the Minister of the Navy Department.

ART. XXX. The decisions shall be executed by the Public Procurators of Prize Courts.

In the execution of decisions the Public Procurators may request the assistance of the Naval Authorities and employ police force.

ART. XXXI. The provisions of this chapter shall apply also, as far as possible, to cases of vessels which under special circumstances have not been brought into port.

Supplementary Provision.

ART. XXXII. These Regulations shall take effect from the date of promulgation.

As the result of the amendment of the Prize Court Regulations, the following appointments are published:

I. *The Sasebo Prize Court.*

President.

Matsumuro Itasu, Judge.
Appointed, 10th, 2nd month, 37th year.

Councillors.

Yonemura Sosen, Judge.
Appointed, 10th, 2nd month, 37th year.
Released, 9th, 4th month, 37th year.

Yamaguchi Takehiro, Judge.
Appointed, 10th, 2nd month, 37th year.

Atachi Mineichiro, Councillor of the Department of Foreign Affairs.
Appointed, 10th, 2nd month, 37th year.
Released, 2nd, 3rd month, 37th year.

Ota Sanjiro, Commander.
Appointed, 10th, 2nd month, 37th year.
Released, 22nd, 1st month, 39th year.

Kamiyama Mannoshin, Councillor of the Legislative Bureau.
Appointed, 10th, 2nd month, 37th year.

Sagara Tsunao, Enquirer.
Appointed, 10th, 2nd month, 37th year.
Released, 16th, 6th month, 38th year.

Baron Nishi Shinrokuro, Captain.
Appointed, 2nd, 3rd month, 37th year.
Released, 8th, 3rd month, 37th year.

Yendo Genroku, Councillor of the Navy Department.
Appointed, 2nd, 3rd month, 37th year.
Matsuda Doichi.
Appointed, 9th, 3rd month, 37th year.
Okata Keisuke, Lieutenant Commander.
Appointed, 9th, 3rd month, 37th year.
Released, 12th, 4th month, 37th year.
Koyama Matsukichi, Judge.
Appointed, 9th, 4th month, 37th year.
Sakai Tadatoshi, Captain.
Appointed, 12th, 4th month, 37th year.
Released, 10th, 2nd month, 38th year.
Miyachi Sadatoki, Captain.
Appointed, 15th, 2nd month, 38th year.
Released, 14th, 6th month, 38th year.
Ide Rinroku, Captain.
Appointed, 14th, 6th month, 38th year.
Released, 9th, 8th month, 38th year.
Sasaki Hirokatsu, Captain.
Appointed, 9th, 8th month, 38th year.
Released, 12th, 12th month, 38th year.

Public Procurators.

Minakami Chojiro, Public Procurator.
Appointed, 10th, 2nd month, 37th year.
Yamamoto Shinrokuro, Public Procurator.
Appointed, 10th, 2nd month, 37th year.
Hayashi Yeijuro, Enquirer.
Appointed, 2nd, 3rd month, 37th year.

II. *The Yokosuka Prize Court.*

President.

Hasegawa Takashi, Judge.
Appointed, 2nd, 3rd month, 37th year.

Councillors.

Watanabe Toru, Judge.
Appointed, 2nd, 3rd month, 37th year.
Atachi Mineichiro, Councillor of the Department of Foreign Affairs.
Appointed, 2nd, 3rd month, 37th year.
Suzuki Kisaburo, Judge.
Appointed, 2nd, 3rd month, 37th year.

Shimooka Chuji, Councillor of the Legislative Bureau.
Appointed, 2nd, 3rd month, 37th year.
Kurachi Tetsukichi, Councillor of the Department of Foreign Affairs.
Appointed, 2nd, 3rd month, 37th year.
Sakakiwara Chuzaburo, Lieutenant Commander.
Appointed, 2nd, 3rd month, 37th year.
Released, 10th, 8th month, 38th year.
Tokuta Michizo, Lieutenant Commander.
Appointed, 2nd, 3rd month, 37th year.
Released, 5th, 3rd month, 39th year.
Yamakawa Tampu, Councillor of the Navy Department.
Appointed, 2nd, 3rd month, 37th year.
Kataoka Yeitaro, Commander.
Appointed, 10th, 8th month, 38th year.

Public Procurators.

Kobayashi Yoshiro, Public Procurator.
Appointed, 2nd, 3rd month, 37th year.
Uchida Shigenari, Enquirer.
Appointed, 2nd, 3rd month, 37th year.
Yanagita Kunio, Councillor of the Legislative Bureau.
Appointed, 2nd, 3rd month, 37th year.

III. *The Higher Prize Court.*

President.

Viscount Tanaka Fujumaro, Privy Councillor.
Appointed, 10th, 2nd month, 37th year.

Councillors.

Baron Nishi Tokujiro, Privy Councillor.
Appointed, 10th, 2nd month, 37th year.
Terashima Naoshi, Judge.
Appointed, 10th, 2nd month, 37th year.
Arima Shinichi, Vice Admiral.
Appointed, 10th, 2nd month, 37th year.
Released, 11th, 1st month, 38th year.
Ichiki Kitokuro, Hogaku Hakushi (LL.D.), Director of the Legislative Bureau.
Appointed, 10th, 2nd month, 37th year.
Released, 13th, 1st month, 39th year.
Inoue Shoichi, Judge.
Appointed, 10th, 2nd month, 37th year.

Tomitani Seitaro, Judge.
Appointed, 10th, 2nd month, 37th year.
Hashimoto Masaakira, Rear Admiral.
Appointed, 10th, 2nd month, 37th year.
Released, 20th, 12th month, 38th year.
Yamaza Yenjiro, Director of the Bureau of Political Affairs of the Department of Foreign Affairs.
Appointed, 10th, 2nd month, 37th year.
Kimotsuki Kaneyuki, Vice Admiral.
Appointed, 11th, 1st month, 38th year.
Released, 4th, 11th month, 38th year.
Doke Hitoshi, Councillor of the Legislative Bureau.
Appointed, 9th, 8th month, 38th year.
Matsui Keishiro, Councillor of the Department of Foreign Affairs.
Appointed, 9th, 8th month, 38th year.
Matsumoto Wa, Rear Admiral.
Appointed, 4th, 11th month, 39th year.
Kato Tomosaburo, Rear Admiral.
Appointed, 20th, 12th month, 38th year.
Released, 25th, 1st month, 39th year.
Okano Keijiro, Hogaku Hakushi, Director of the Legislative Bureau.
Appointed, 20th, 1st month, 39th year.
Sakamoto Toshiatsu, Vice Admiral.
Appointed, 25th, 1st month, 39th year.

Public Procurators.

Tsuzuki Keiroku, Chief Secretary of the Privy Council.
Appointed, 10th, 2nd month, 37th year.
Ishiwatari Binichi, Vice Minister of Justice.
Appointed, 10th, 2nd month, 37th year.

These Courts continued the trials after conclusion of the Treaty of Peace, by the following resolution:

RESOLUTION OF THE CABINET CONCERNING CONTINUATION OF TRIAL OF CASES OF CAPTURE AFTER THE RESTORATION OF PEACE.

The following notification was received from the Cabinet on the 19th day of the 9th month of the 38th year of Meiji:

The enclosed propositions, submitted by the Ministers of War and the Navy, concerning the continuation of trial of cases of capture

after the restoration of peace, have been adopted by the Cabinet Council.

(Enclosure.) *Propositions of the Ministers of War and the Navy.*

1. All the cases of capture pending in Prize Courts at the time of the restoration of peace shall be allowed to be tried, no matter in what stages they are. In other words, the Higher and other Prize Courts shall continue sitting, even after the restoration of peace, just as they have been doing, until they shall have finished all the cases pending.

2. Vessels which have been captured but which have not been brought to a port of adjudication, being on the way at the time of the restoration of peace, shall be referred to Prize Courts and be adjudged.

The Higher Prize Court and the Prize Courts at Yokosuka and Sasebo were closed on the 31st of March, 1906, by Imperial Ordinance No. XXXIV.

Sect. II. Vessels Captured by the Japanese Navy.

To throw light on all the prize cases brought before the Japanese Prize Courts they are presented in tabulated form.

I. VESSELS CAPTURED, ARRANGED ACCORDING TO NATIONALITY.

The total tonnage of the vessels condemned is:
Registered tonnage, about 81,565 tons.
Gross tonnage, about 124,489 tons.

Nationality.	Total.	Steamers.	Sailing Vessels.	Condemned.	Released.	Released by Special Favour.
Russia	16	13	3	16	0	0
Great Britain	22	21	1	17	5	0
Germany	10	10	0	7	0	3
America	5	5	0	3	0	2
Norway	4	4	0	1	2	1
Austria-Hungary	2	2	0	2	0	0
France	2	2	0	2	0	0
Holland	1	1	0	1	0	0
Sweden	1	1	0	1	0	0
China	1	1	0	0	1	0
Total	64	60	4	50	8	6

II. VESSELS CONDEMNED AND REASONS FOR CONDEMNATION.

	Sasebo Prize Court.	Yokosuka Prize Court.	Total.
Enemy vessel	11	6	17
Transportation of contraband goods	9	16	25
Transportation of contraband persons	1	0	1
Violation of blockade	4	0	4
Attempt to obtain military information	2	0	2
Assisting the enemy's hostile operations	1	0	1
Total	28	22	50

III. VESSELS ADJUDICATED AT VARIOUS PRIZE COURTS AND THE HIGHER PRIZE COURT.

	Sasebo Prize Court.	Yokosuka Prize Court.	Total.
Total number of vessels captured	39	25	64
Vessels for which petitions were filed	29	19	48
Vessels for which petitions were not filed	6	4	10
Vessels that appealed from the decisions of Prize Courts (number dealt with by the Higher Prize Court)	28	19	47[1]
Vessels condemned	28	22	50
Vessels released	7	1	8
Vessels released by special favour	4	2	6

[1] The number dealt with by the Higher Prize Court includes three vessels that appealed from the decision with regard to cargo only.

IV. NUMBER OF CASES TRIED BEFORE THE PRIZE COURTS.

	Sasebo Prize Court.	Yokosuka Prize Court.	Total.
Cases tried	90	34	124
Cases in which petitions were filed	77	29	106
Cases for which petitions were not filed	13	5	18

V. NUMBER OF CASES TRIED BEFORE THE HIGHER PRIZE COURT.

	By Petitioner.	By Public Procurator.	Grand Total.
Appeals from the Sasebo Prize Court.....	65	0	65
Appeals from the Yokosuka Prize Court.....	26	1	27
Grand total.....			92

Besides the above there was one case dismissed by the Higher Prize Court and one by the Sasebo Prize Court.

Sect. III. Japanese Principles Concerning Prize Cases.

Readers will be convinced that Japan was law-abiding in dealing with prize cases, when they review the details of decisions mentioned in the following chapters.

Here the author enumerates some of the important principles laid down by the Japanese Prize Courts, quoting decisions in each Section as illustrative of those principles.

I. Petition by a Party Not Interested.

Case I. *The Manchuria.*

Decision published in the *Official Gazette*, Tokyo, of June 24, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the cargo of the Russian steamship *Manchuria*, on the 26th of the 5th month of the 37th year of Meiji.[1]

Petition No. III.

Decision.

Petitioner—Frederick Ringer,
Consul of Denmark at Nagasaki,
7, Oura, Nagasaki.

In the case of the capture of the cargo of the Russian steamship *Manchuria*, the following decision has been given:

[1] In the texts of decisions, the dates are translated literally. The 37th year of Meiji corresponds to 1904 A.D. The first month is January, etc.

Text of the Decision.

The petition under consideration is hereby rejected.

Facts and Grounds of the Decision.

The goods under consideration, consisting of 3 boxes of bedding, books, and miscellaneous articles, were sent by a Christian church, Copenhagen, Denmark, to a Danish Christian church at Port Arthur in the steamship *Manchuria*, belonging to the East Asia Steamship Company, Russia, and were captured by the Imperial man-of-war *Tatsuta*, together with the steamship, off Port Arthur, on the 9th of the 2nd month of the 37th year of Meiji.

The above facts are clear from the petition; the statement of Lieutenant S. Kihara, representing the captain of the capturing man-of-war; the testimony given by K. Prahl and O. Tampio, master and first mate of the steamship *Manchuria;* and the freight list and log-book of the ship.

The petitioner makes the petition as Consul of H. M. the King of Denmark, and protests that the goods concerned in this case ought not to be captured, as they are consigned to a Danish subject and as they are not contraband of war nor property of a subject of a belligerent state. The petitioner did not appear in court on the day of oral trial, although he was notified of the date.

The gist of the argument of the Public Procurator is that the petitioner cannot properly be considered to be the "interested person," as mentioned in the Prize Court Regulations,[1] on account of his being a consul, and therefore the petition under consideration is not lawful; but that as the goods are books and daily necessaries for use of a Danish Christian church, and as they are not contraband of war and may be deemed requisite for religious purposes, it is proper, from the principle of protection of religion, to release them.

After giving due consideration, the Court concludes that the necessary qualification for one who makes a petition is, according to the 2nd clause of Art. XVI. of the Prize Court Regulations, that he must be an interested person. The petitioner has not proved that he has any interest in the goods involved, and he has filed a petition for his countryman only on account of his being a consul. Nor can he be considered as an agent, as he has not proved that he has a power of attorney from an interested person, and furthermore, he is disqualified as an agent by the 2nd clause of Art. XVII. of the Prize Court Regulations.

Therefore the petition under consideration is not lawful. And if a petition is unlawful, it is to be rejected and there is no need to

[1] See Appendix.

discuss the petitioner's plea. Therefore the decision is given as mentioned in the text.

Given at the Sasebo Prize Court this 26th day of the 5th month of the 37th year of Meiji, in the presence of the Public Procurator of the Court, T. Yamamoto.

MATSUMURO,
President of the Sasebo Prize Court.
YAMAGUCHI,
Councillor of the Sasebo Prize Court.
OTA,
Councillor of the Sasebo Prize Court.
KAMIYAMA,
Councillor of the Sasebo Prize Court.
YENDO,
Councillor of the Sasebo Prize Court.
YOSHIDA,
Clerk of the Sasebo Prize Court.

Case II. *The Mukden.*

Decision published in the *Official Gazette*, Tokyo, of June 23, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the cargo of the Russian steamship *Mukden*, on the 26th of the 5th month of the 37th year of Meiji.

Petition No. XII.

Decision.

Petitioner—J. Goudareau,
Acting Vice Consul of France at Nagasaki.

In the case of the capture of the cargo of the steamship *Mukden*, the decision given is as follows:

Text of the Decision.

This petition is hereby rejected.

Facts and Grounds of the Decision.

The goods under consideration, consisting of a box of incense and ten other kinds of articles, were transshipped at Shanghai from the French steamships *Ernest Simon* and *Camboge*, to the steamship *Mukden*, of the East China Railroad Company of Russia, to be trans-

ported to Vladivostock, Russia, and were captured by the Imperial man-of-war *Heiyen*, at Fusan, on the 6th of the 2nd month of the 37th year of Meiji, together with the steamship *Mukden*.

The above facts are clear from the statement of Lieutenant N. Yoshimura, representing the captain of the man-of-war *Heiyen*, the statements of Serge Wisniofske (?)[1] and Alexander Iwanovitch Kanaek (?), first and second mates of the steamship *Mukden*, the freight list, the bill of lading, the log, etc.

The gist of the statement of the petitioner is, that the consignors of the goods under consideration are the Messageries Maritime Co. and the East Asia Co., both of France. As he holds an office to protect the interests of French citizens, and moreover the consignee not being able to make a petition on account of the difficulty of communication since the outbreak of the Russo-Japanese War, he has filed the petition in the capacity of an Acting Vice Consul, and that he requests the release of the goods, as they are not contraband of war.

The purport of the argument of the Public Procurator is, that a consular officer has the duty of protecting the interests of the citizens of his country, but he cannot be construed on that account to be the "interested person" as mentioned in the Prize Court Regulations, and consequently the petition is not lawful; that the goods, which are the object of petition, are enemy goods, and, therefore, they are confiscable; but that one bundle of French national flags, belonging to the French Commercial Agent at Vladivostock, should be released.

After due consideration, the Court concludes that a consul's duty is to protect the interests of his countrymen residing in the state to which he is accredited, as is argued by the petitioner, but it is impossible to construe him on that account to be the "interested person" as mentioned in Art. XVI. of the Prize Court Regulations. Moreover, both the consignors and consignee are not residing in the country to which the petitioner is accredited, and consequently this petition cannot be said to be lawful. And if a petition is unlawful, it is to be rejected without examining other statements of the petitioner. Therefore, the decision has been given as stated in the text.

Given this 26th day of the 5th month of the 37th year of Meiji, at the Sasebo Prize Court in the presence of C. Minakami, the Public Procurator of the Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.[2]

[1] Spelling probably in error.

[2] Names are omitted, as readers can find them in Book II. Part I. Chapter I.

II. Petition by an Attorney Other Than a Japanese Counsellor at Law.

Case I. *The Mukden.*

Decision published in the *Official Gazette*, Tokyo, of June 23, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the cargo of the Russian steamer *Mukden*, on the 26th of the 5th month of the 37th year of Meiji:

Petition No. XIII.

Decision.

Petitioner—The East Asiatic Company, Shanghai, China.
Representative—A. Petersen (?).[1]
Representative—Ivan Andersen (?).
Advocate—Frederick Ringer, British subject, 7, Oura-machi, Nagasaki.

In the case of the capture of the cargo of the steamship *Mukden*, the decision given is as follows:

Text of the Decision.

The petition is hereby rejected.

Facts and the Grounds of the Decision.

The goods under consideration, consisting of paper for account-books and five other kinds of articles, were destined for Vladivostock, being laden in the steamship *Mukden*, of the East China Railroad Company, Russia, and were captured by the Imperial man-of-war *Heiyen* at the port of Fusan, Korea, together with the ship, on the 6th of the 2nd month of the 37th year of Meiji.

The above facts are clear from the statement of Lieutenant N. Yoshimura, representing the Captain of the man-of-war *Heiyen*, the statements of Serge Wisniofske and Alexander Iwanovitch Kanaek, first and second mates of the steamship *Mukden*, the freight list, the bill of lading, the log, etc.

The gist of the argument of the advocate is that the goods being laden before the outbreak of the war between Japan and Russia and being the property of a merchant company of a neutral state, ought to be released. The advocate of the petitioner did not appear on the day of oral trial, though he was notified of the date.

The gist of the opinion of the Public Procurator is that there is

[1] In translating proper names, if there is any doubt as to the spelling, interrogation marks are affixed.

some defect in the qualification of the advocate; that the goods under consideration being all the enemy's goods, are confiscable; but that the paper for account-books, being of official character and belonging to the French Commercial Agent at Vladivostock, should be released.

After due consideration, the Court concludes that this petition, having been filed by the advocate of the petitioner, in accordance with the power of attorney given him by the representatives of the East Asiatic Company, Shanghai, but that according to the 2nd clause of Art. XVII. of the Prize Court Regulations, the advocate of a petitioner is required to be a Counsellor at Law of the Empire, consequently this petition cannot be said to conform to the law. And if the petition is not lawful, it is proper to reject it without examining the argument of the advocate of the petitioner. Therefore, the decision as stated in the text has been given.

Given this 26th day of the 5th month of the 37th year of Meiji, at the Sasebo Prize Court, in the presence of the Public Procurator, T. Yamamoto.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

III. Petition by Telegraph.

Case I. *The Manchuria.*

Decision published in the *Official Gazette*, Tokyo, Feb. 20, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 31st of the 5th month of the 37th year of Meiji by the Sasebo Prize Court, in the case of the cargo of the Russian steamship *Manchuria*.

Decision.

Petitioner—Henry Schmidt, German subject, Hamburg, Germany.

Advocate—H. Akao, Counsellor at Law, 46, 4-chome, Motohama Machi, Yokohama.

In the case of the cargo of the Russian steamship *Manchuria*, the following decision has been given:

Text of the Decision.

The petition is hereby rejected.

Facts and the Grounds of the Decision.

The advocate filed a petition requesting the release of 375 chests of Ceylon tea, saying that he is deputed by the petitioner to do so.

The advocate, however, did not produce any formal document testifying to his power of attorney, but only a telegram. A telegram not being sufficient as a proof of such power, the Court ordered the advocate to replace it by a formal document. He consented and asked for a delay, which was granted him. The period designated by the Court passed, but the advocate has not produced a formal power of attorney. On the contrary, he argues that as there is no rule in the Prize Court Regulations prescribing the form of a power of attorney, such power must be considered, according to the principle of Civil Law, as established by the expression of intention; and he requests that the telegram produced by him be considered as a lawful power of attorney, and a decision given on the case.

The purport of the opinion of the Public Procurator is that as the advocate has not produced a formal power of attorney, he is not a lawful attorney, and consequently the petition filed by him is invalid. Thus the petition is not properly constituted, and there is no need to examine the case.

After due consideration, the Court concludes that as it is prescribed in Art. XX. of the Prize Court Regulations, "Prize Courts shall make rules governing the procedure of trial"; and as this Court has ruled that agency for making a petition is not effective, unless deputed by a formal document, it is very clear that any person making a petition at this Court must conform to this rule. The advocate argues that there is nothing prescribed in the Prize Court Regulations concerning the form of power of attorney; therefore, according to the principle of Civil Law, an expression of intention is sufficient. But it cannot be said that no form is necessary to testify to the legal relation of agency, on the ground that such relation is established without form according to the Civil Law. The advocate was instructed that a formal power of attorney was necessary according to the rules made by this Court, and was given proper time to produce it; but he did not file it in the period designated. He must be said, therefore, to have no authority to represent the petitioner at this Court. Thus the petition filed by him is a petition of one not qualified to make it and is unlawful. If the petition is unlawful, it ought to be rejected and there is no need to examine it. Therefore, the decision as mentioned in the text is given.

Given this 31st day of the 5th month of the 37th year of Meiji, at Sasebo Prize Court, the Public Procurator, S. Yamamoto, being present.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, of Jan. 27, 1905.

The following decision was given on the 17th of the 1st month of the 38th year of Meiji by the Higher Prize Court in the case of the capture of the Russian steamship *Manchuria* and her cargo.

Decision.

Case No. XV.

Petitioner—Henry Schmidt, German subject, Hamburg, Germany.

Advocate—H. Akao, Counsellor at Law, 46, 4-chome, Motohama Machi, Yokohama.

A protest has been filed by H. Akao, advocate of the petitioner, Henry Schmidt, against the decision of the Sasebo Prize Court given on the 31st of the 6th month of the 37th year of Meiji, in the case of 375 boxes of Ceylon tea carried by the Russian steamship *Manchuria*, which was captured by the Imperial man-of-war *Tatsuta*, 18 miles southeast of Port Arthur, on the 9th day of the 2nd month of the 37th year of Meiji. The original Court rejected the petition of the said Henry Schmidt. The case has been heard at this Court, the Public Procurators of the Higher Court K. Tsuzuki and B. Ishiwatari taking part in the trial.

The purport of the protest preferred by the advocate H. Akao and the grounds for it are as follows:

The document testifying to the power of attorney which the advocate filed at the Sasebo Prize Court, is a telegram certified by a Japanese authority, and clearly proved that the advocate has such power. Notwithstanding this and notwithstanding that several trials had been held concerning the case, the same Court improperly rejected the petition. At the time of trial on the 6th of the 5th month of the 37th year of Meiji, the original Court ordered the advocate to produce a real power of attorney not later than the 26th of the same month. But correspondence between the advocate and the petitioner requires at least eighty days. Had the power of attorney been sent for by telegraph, the document could not have reached the hand of the advocate in less than forty days. It was thus impossible for the advocate to produce the document within the period specified. He therefore requested prolongation of the period. The original Court, however, refused the advocate's request, and rejected the petition because of the advocate's failure to comply with the order of the Court, which was an impossibility. In Art. 643 of our Civil Code, it is stated

"Agency takes effect when one of the parties deputes to the other party the performance of a legal act, and the latter accepts the duty." Respecting the case now before the Court, the petitioner deputed the advocate by telegraph to sue for release of 375 boxes of Ceylon tea. The advocate accepted the duty and instituted a petition. So the power of attorney given to the advocate must be said to be perfect. Concerning the form of a petition, there is a rule in Art. XVII. of the Prize Court Regulations, but concerning the form of a document testifying the power of attorney, nothing is provided. It makes no difference, therefore, whether such power be testified by a telegram or any other document. Furthermore, the method of proving the power of attorney is not a procedure in the adjudication of a prize; but the Sasebo Prize Court considers it to be such a procedure, and notwithstanding there is no legally prescribed documentary form for a power of attorney and no prohibition against producing such power by a telegram, has adjudged that a regular power of attorney is required. It is impossible to ascertain what the form of a regular power of attorney should be, as it is not mentioned in the decision. But if it means a document signed by the principal and stamped with his signet, the conclusion will be that the petitioner cannot make a petition through his agent as he has no signet, which is unreasonable. On these grounds, the advocate requests that the decision of the Sasebo Prize Court be rescinded and that the 375 boxes of Ceylon tea be released.

The purport of the answer of the Public Procurator of the Sasebo Prize Court is as follows:

It is certain that the legal relation of agency is established according to Civil Law. But if there is no form prescribed in Civil Law respecting deputation, it cannot be said that agency is perfect by mere expression of intention. As to the method of giving power of attorney, it belongs to procedure. For instance, in a civil case the rules of Civil Procedure must be observed and a power of attorney not conforming to the rules of Art. 64 of Civil Procedure is invalid. So, in cases before Prize Courts, it is set forth in the 2nd clause of Art. XVI. of the Prize Court Regulations that "a petition may be made with documents within 30 days . . ."; in the 2nd clause of Art. XVII., "A petitioner may appoint a Counsellor at Law of the Empire, but no other, as his advocate," and in Art. XX., "besides the provisions of the preceding articles the Prize Court will frame rules of procedure governing trials within its jurisdiction." At the beginning, the Sasebo Prize Court decided that powers of attorney should be written documents, as in civil procedure; that in case an advocate could not produce his regular power of attorney on account of the

petitioner living in a distant place, he should be permitted to file a petition with a deputisation by telegraph, and his case would be heard at the oral trials, but that he would be required to deposit a regular power of attorney afterward. All other advocates have conducted their petitions under this procedure. The counsel H. Akao, could not procure a regular power of attorney within the specified period because of his own negligence, for sufficient time was allowed him. And now he argues that deputisation by a telegram is enough, as there is no form of a power of attorney specified in the Prize Court Regulations. His petition, therefore, does not conform to the Regulations, and is of course invalid. A telegram is a document in a certain sense, and deputisation by telegraph is deputisation by a document. But it is a general rule that a document must be signed or stamped with signet. So that a telegram which does not bear the sign manual or impression of signet, cannot be considered as a document. There is thus no defect in the original decision, which rejected the petition on the ground that any petition unaccompanied by a regular power of attorney did not conform to law. The protest ought, therefore, to be overruled.

The decision of this Court given upon the protest is as follows:

The counsel Akao, as it is clear from the records, produced to prove his power of attorney only a transcript of a telegram, certified by the Yokohama Post Office, and has not deposited the regular power of attorney ordered by the original Court. Thus his petition was rejected. That proceedings of legal actions should be carried on according to rules to be observed by the court concerned, is a principle recognised from the nature of such rules of procedures. The provision of Art. XX. of the Prize Court Regulations is nothing more than an application of this principle. The Prize Court before giving a decision on the petition under consideration, had prescribed, according to the provision of Art. XX. of the Prize Court Regulations, that the Court would not acknowledge deputisation by telegraph, and that the advocate should be required to produce a regular power of attorney within a period specified. In order to maintain that his petition conforms to law, therefore, the advocate must prove that he has such power, according to the form and within the period, prescribed by the Court. In giving order to produce a regular power of attorney, the original Court had authority at its discretion to fix a period which it considered sufficient. Such period must be punctually observed by the advocate, and no violation of it be permitted. And as the requirement for proving a power of attorney is an essential element in constituting a lawful petition, it is very clear that it is part of the rules of procedure before the Prize Court. Therefore, the advocate's argument that the period prescribed by the

original Court was nothing but the enforcement of an impossibility and that there existed the deputisation of an agency between the principle and the advocate by the telegram, are both inadmissible; and the original decision rejecting the petition is proper.

The decision of this Court, therefore, is as follows:

The protest is hereby rejected.

Given at the Higher Prize Court this 17th day of the 1st month of the 38th year of Meiji.

VISCOUNT F. TANAKA,
President of the Higher Prize Court.
BARON T. NISHI,
Councillor of the Higher Prize Court.
N. TERASHIMA,
Councillor of the Higher Prize Court.
K. ICHIKI,
Councillor of the Higher Prize Court.
S. INOUE,
Councillor of the Higher Prize Court.
K. KIMOTSUKI,
Councillor of the Higher Prize Court.
S. TOMITANI,
Councillor of the Higher Prize Court.
M. HASHIMOTO,
Councillor of the Higher Prize Court.
Y. YAMAZA,
Councillor of the Higher Prize Court.

Case II. *The Resnik.*

Decision published in the *Official Gazette*, of June 24, 1904.

Decision of the Higher Prize Court.

The following decision has been given by the Higher Prize Court on the Russian sailing vessel *Resnik* and her cargo, on the 17th of the 6th month of the 37th year of Meiji.

Decision.

Petitioner—Serge Runiju (?), Directeur d'Agriculture, St. Petersburg, Russia.

Advocate—W. Nagashima, Counsellor at Law, 10, Kaga-cho, Kyobashi-ku, Tokyo.

The advocate of the petitioner has filed in this Court an appeal, protesting against the decision given by the Sasebo Prize Court, on

the 18th of the 4th month of the 37th year of Meiji, upon a petition made in regard to the capture of the Russian sailing vessel *Resnik* and her cargo, rejecting the petition, and the case has been tried in the presence of the Public Procurators, K. Tsutsuki and B. Ishiwatari.

The purport of the protest of the advocate of the petitioner is that, in accordance with an advertisement in the *Official Gazette* of the 9th of the 3rd month of the 37th year of Meiji, the advocate of the petitioner filed a petition in regard to the capture of the Russian sailing vessel *Resnik* and her cargo. The petition was sent by telegram, the time being short; and notwithstanding the lawfulness of the petition, it was rejected on the 16th of the 4th month of 37th year of Meiji, as not conforming to the law. The Prize Court Regulations do not, however, prescribe any form for a petition, and the advocate thinks that it is enough, if the intention to make a petition is given within the period, whether it be by telegram or by mail. Especially in this case, the telegram instructing the advocate to express the intention to petition was received at the Tokyo Post Office at 4.35 p.m. of the 6th of the 4th month of the 37th year of Meiji, and later delivered to the advocate. So that even if the petition had been sent by the railroad train leaving Shimbashi at 9.30 p.m., the same day, it would not have arrived at the Prize Court, Sasebo, until the afternoon of the 9th or the forenoon of the 10th. Such being the case there was no other means to make known the intention to petition; and the advocate sent first a telegram to express his intention to make a petition and then mailed an ordinary petition to make the document complete. Thus the case is quite different from one in which a petition is not filed within the proper period. The advocate, therefore, petitions that the case be specially treated and the original decision be reversed.

The reason of the decision on the case under consideration is explained as follows:

According to Art. XVII. of the Prize Court Regulations, not only must a petition specify the grounds on which it is made and be accompanied by documents and articles in proof of them, but in case a petition is made through an advocate, such advocate must be a Counsellor at Law practising in the Empire. So that in order to make a petition through an advocate, as in the case now under consideration, the petition must be accompanied by a document sufficient to prove his authority. On examining the records concerning the case before this Court, the advocate of the petitioner, in communicating his intention of making petition by telegraph, on the 8th of the 4th month of the 37th year of Meiji, did not produce anything to show

his authority, and after the lapse of the period allowed for making petitions, on the 11th of the same month, same year, he for the first time deposited a petition accompanied by a telegram showing his authority. So that the petition cannot, of course, be said to have been filed within the period allowed. The rejection of the petition by the original Prize Court, as not having been filed within the time prescribed, is proper, and there is no ground for the protest.

The decision of this Court on the case is, therefore, as follows:

The petition now before the Court is hereby rejected.

Given at the Higher Prize Court this 17th day of the 6th month of the 37th year of Meiji.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case II. *The Manchuria* (cargo).

Published in the *Official Gazette*, Tokyo, 27th May, 1904.

Decision.

Petition No. II.

Petitioners—Rück Versicherungs Gesellschaft, München, Germany.

Advocate—Y. Nagashima, Counsellor at Law, No. 10, Kagacho, Kyobashi, Tokyo.

The petition by the telegram addressed to this Prize Court by the petitioners with the date of the 14th of March, 1904, in saying, "We beg to make a petition concerning the tea, paper, and other cargoes on the *Manchuria*," is not considered to be a petition in due form and is hereby rejected.

The 18th day of the 4th month of the 37th year of Meiji.

(Signed) I. MATSUMURA,

President of the Sasebo Prize Court.

IV. Petition to Establish Prior Right to the Vessel.

Case. *The Nigretia.*

Decision published in the *Official Gazette*, Tokyo, of Nov. 16, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 17th of the 4th month of the 38th year of Meiji, by the Sasebo Prize Court, to a petition praying the recognition of the right of preference against the British steamship *Nigretia*.

Decision.

Petition No. I.

Petitioners—Mitsubishi Goshi Kwaisha, 1, 1-chome, Yaesu Cho, Kojimachi Ku, Tokyo.

Legal representative—H. Iwasaki, Managing partner.

Attorneys—T. Takagi, Counsellor at Law.

T. Nakamura, Counsellor at Law, No. 3, 1-chome, Uchisaiwai Cho, Kojimachi Ku, Tokyo.

To the petition praying the recognition of the right of preference against the British steamship *Nigretia*, the decision is given as follows:

Text of Decision.

This petition is hereby rejected.

Facts and Reasoning.

The main points of the statement of the attorneys for the petitioner are:

The petitioner chartered the British steamship *Nigretia*, from the 14th of the 4th month of the 37th year of Meiji, to the 24th of the 10th month of the same year. On the 19th of the 10th month in the same year, this ship stranded near Toungry Pagoda, about 67 nautical miles down the river of Kiukiang, China, so the petitioner took all means for her salvage and thereby spent *yen* 4379.50. The above being expenditure for general salvage the petitioner claims a preferential right against this ship for the said amount. This ship, however, after the expiration of the term of charter by the petitioner, was captured by the Japanese man-of-war *Tsushima* on the 19th of the 12th month of the same year, in N. lat. 35° 18′ and E. long. 129° 50′. The reason of the capture is a matter indifferent to the petitioner. But as explained above, he acquired an actual preferential right against this ship and is in a position entitled to set up that right against any third party. Hence, whoever has acquired any right to this ship must recognise the above right of the petitioner. It may be gainsaid that, although the petitioner's right is good under civil law, it cannot be claimed in a case such as capture under public law. But the jurisprudence of International Law has developed lately and tends more and more to respect the rights of private persons. And in No. 2 of Art. XVI. of the Japanese Prize Court Regulations, it is stipulated that not only those who claim ownership of things captured, but those who have interest in them, are entitled to institute a petition. Consequently it must be admitted that a claimant of a preferential right, like the petitioner, is also entitled to the protection of the above regulation. The preferential right in consideration being

an actual right recognised by law, and not based upon a voluntary contract like a mortgage, no fraud can be committed by claiming it; and therefore it should be reasonably protected. Moreover, the right of capture will not be affected in any degree by giving protection to this right. For the above reasons, judgment admitting the petitioner's preferential right against the steamship *Nigretia* to the amount of *yen* 4379.57, the expenditure for her salvage, should be given.

The main points of the opinion of the Public Procurator are: The petitioner is not a party who has any interest in this ship. Even supposing he has an interest, this petition not being to claim the confiscation or release of the ship, but to pray for the recognition of a preferential right against this ship based upon certain obligations, should not be adjudicated at a Prize Court. Therefore it should be rejected.

After due consideration the Court concludes as follows:

Although the petitioner spent the sum of *yen* 4379.57 for the salvage of the steamship *Nigretia*, the Japanese regulations do not recognise any preferential right against things captured. Moreover, according to International Law, the right of a captor being absolute, neither the real right nor the obligatory right of a third party can be set up against it. The attorneys for the petitioner contend that as No. 2 of Art. XVI. of the Japanese Prize Court Regulations admits the right of petition not only to the claimant of the ownership of the thing captured, but also to those who have an interest in it, the preferential right in consideration should be protected by that regulation. But though the said regulation stipulates that the right of petition is not limited to owners, yet it does not necessarily follow that a preferential right against the thing captured, should be protected by that stipulation. For the above reasons, the claim of the attorneys for the petitioner for the recognition of a preferential right against the ship, is groundless.

The decision is therefore given as in the text.

Given this 17th day of the 4th month of the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, C. Minakami, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

The Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Nov. 16, 1905.

The following decision was given on the 2nd of the 11th month of the 38th year of Meiji, by the Higher Prize Court in the appeal case

of the petition praying for the recognition of a preferential right against the British steamship *Nigretia*.

Decision.

Case No. XLVI.

Petitioner—Mitsubishi Goshi Kwaisha, 1, 1-chome, Yaesu Cho, Kojimachi Ku, Tokyo.

Legal representative—H. Iwasaki, Managing partner.

Attorneys—T. Takagi, Counsellor at Law.

T. Nakamura, Counsellor at Law, 3, Uchisaiwai Cho, 1-chome, Kojimachi Ku, Tokyo.

In the petition for recognition of a preferential right against the British steamship *Nigretia*, the Sasebo Prize Court gave decision on the 17th of the 4th month of the 38th year of Meiji, rejecting the petition. Whereas, T. Takagi and T. Nakamura, attorneys for H. Iwasaki, legal representative of the said petitioners, the Mitsubishi Goshi Kwaisha, have filed an appeal against the said decision, the case has been examined and the following decision is given, K. Tsuzuki and B. Ishiwatari, Public Procurators of the Higher Prize Court, taking part.

The appeal by T. Takagi and T. Nakamura, attorneys for the petitioners against the original decision and for the recognition of their preferential right to *yen* 4379.57 for salvage expenses against British steamship *Nigretia* is based upon the following reasons:

The question whether or not a preferential right, as claimed by the petitioners, can be claimed against a captured ship, is the main issue of this case. The original court ruled that the Japanese regulations do not recognise any preferential right against things captured, and that according to International Law, the right of a captor being absolute, neither the real right nor the obligatory right of a third party can be set up against it. But in Art. XVI. of the Japanese Prize Court Regulations, it is stipulated that when the Public Procurator gives his opinion in writing in favour of condemnation, or when the Prize Court deems the Public Procurator's opinion for immediate release unreasonable, the Court shall take steps to make public notification; and that in the above notification it shall be mentioned that those who have an interest are entitled to file a petition in writing within thirty days, including the day following the date of notification. According to this stipulation the right of petition is generally admitted to those who are interested in the condemnation, and it is evident that the wording "those who are interested" does not mean the owners only. The holder of a preferential right being undoubtedly an interested party it is needless to say that the petitioners may be

included among "those who have interest" as set forth in the above stipulation. Notwithstanding that the above stipulation is in such broad terms, the original Court took a narrow view, interpreting the words "those who are interested" to mean owners, and ruled that a preferential right is not recognised in the Japanese Regulations. This ruling was undoubtedly wrong. Not only was the original decision mistaken in the interpretation of the Japanese Prize Court Regulations, but it does not agree with the principle of International Law. The original Court held that according to International Law, the right of a captor being absolute, neither the real right nor the obligatory right of a third party can be set up against it. But such a principle has not yet been confirmed in International Law. On the contrary, there are some scholars who maintain that such a right as claimed by this petition should be respected, because it is a right accruing from the rescue of the life of a ship. Now from a legal point of view, it is agreed in the laws and regulations of all nations that the expenses of general salvage, as in this case, are entitled to preferential right against the ship, and there is neither law nor regulation which has an opposite stipulation. Consequently, the above rule must be held as an international rule. A preferential right being a real right may be claimed against a ship wherever she is; and nothing burdened with such a right can be the object of perfect (unconditional) ownership. Hence, in the confiscation of a ship burdened with a preferential right, the confiscator must admit that burden. Generally speaking, confiscation of contraband of war, etc., as stipulated in Arts. XLII. and XLIII. of the Japanese Regulations Governing Captures at Sea, is a penalty inflicted upon a person who has committed an unlawful act; so it is needless to say that the real right of a third party, who had nothing to do with the unlawful act, should not be affected by this penalty. As the foregoing shows, a third party, as the appellants, who have a real right against the thing captured, should be protected according to International Law. Therefore, the decision of the original Court rejecting the claim of the petitioners as groundless, must be regarded as unreasonable. As to the form of this petition, the Public Procurator of the original Court argued that since it was not to pray for the release of a ship but for the recognition of a preferential right against a ship, it was not in due form. But as explained before, a petition is an action to be filed according to Art. XVI. of the Prize Court Regulations, by a party whose interest may be infringed by the confiscation of a ship, her cargo, or any other thing, hence an action praying for remedy or protection from such infringement, should be admitted by the Court without regard to its form. Although the Prize Court Regulations do not

stipulate that the form of a petition must necessarily be to pray for the release of the thing captured, the Public Procurator's view that the form is limited to that matter, cannot be admitted as a correct interpretation of the spirit of the above regulations. If a ship or a cargo were sunk by a Japanese man-of-war without any offence, the petition to be instituted by the owner of that ship or cargo would certainly be in a form demanding the recovery of damages. If such petition were rejected on the ground that it was not in a form praying for release, then the right party would have no remedy at all. There may be some who argue that matters under the jurisdiction of Prize Courts are limited to two questions, namely whether to release or whether to confiscate, because Art. XIII. of the Prize Court Regulations stipulates that the Councillor in charge of a case shall decide whether the whole or a part of the things captured should be confiscated or released. But the above article merely prescribing the procedure of examination of facts in general and ordinary cases, does not govern the form of a petition, and cannot be made the ground for deciding whether or not a petition is in due form. Again, it may be argued that a petition cannot be allowed unless its object is to dispute whether or not the confiscation was reasonable. But this petition is to pray for the recognition of a preferential right, on the ground that the petitioner has that right against the thing captured; in other words, the main points of this petition are to state that the confiscation of this ship in the same manner as an ordinary ship not burdened with such a right is unreasonable. Hence, this petition must be held to be a petition to dispute whether or not the confiscation was reasonable. As the foregoing shows, this petition is formal and has a lawful ground, and its rejection by the original Court was unreasonable.

The main points of the response of C. Minakami, Public Procurator of the Sasebo Prize Court, are:

The function of the Japanese Prize Court is to consider and decide whether a thing captured should be confiscated or released, and the Court has no authority to judge questions relating to preferential rights as claimed by the petitioner. Moreover, the Japanese regulations have no stipulation admitting preferential rights. Hence, this petition praying for the recognition of preferential rights against this ship is groundless. The petitioner makes several arguments, but they are nothing more than the repetition of the same argument, and none of them is reasonable. Therefore, this appeal should be rejected.

The reasons of decision by the Higher Prize Court are given as follows:

The appellant contends that the original decision rejecting the

petition for the recognition of a preferential right against the steamship *Nigretia* is unreasonable. But a Prize Court has no jurisdiction to examine petitions for the recognition of preferential rights, hence the rejection of such petition by the original Court was quite reasonable. As to the appellant's appeal on the ground that they are an interested party and that a third party who has a real right, such as this preferential right, should be protected, there is no need of giving any explanation.

The decision is therefore given as follows:

This appeal is hereby dismissed.

Given this 2nd day of the 11th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

V. Petition for Release of the Vessel, Establishment of Prior Right or Payment of Claim, in Order to Have Claim Against the Vessel Satisfied.

Case. *The Russia.*

Decision published in the *Official Gazette*, June 22, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the Russian steamship *Russia*, 26th of the 5th month of the 37th year of Meiji.

Petition No. I.

Decision.

Petitioner—W. H. Gill, Gill & Co., No. 74, Kyo-machi, Kobe.
Advocate—Kazuhisa Sakurai, Counsellor at Law, 54, 4-chome, Kita-Nagasa-Dori, Kobe.

Concerning the petition in relation to claims against the owner of the Russian steamship *Russia*, the following decision is given:

Text of the Decision.

The petition under consideration is hereby rejected.

Facts and Ground of the Decision.

The gist of the petition made by the advocate of the petitioner is: During the stay of the *Russia* at Kobe, which port she entered on the 14th of the 11th month of the 37th year of Meiji, the petitioner had, in compliance with the request of the agent of the ship's owner at Vladivostock, paid the expenses necessary for the ship to resume

her voyage, which expenses together with his own remuneration the petitioner is entitled to receive as an agent of the said ship, amounting to *yen* 18,116.91. The petitioner, having received the sum of *yen* 3043.51 for freightage, was entitled to receive from the owner of the said ship the balance, that is, the sum of *yen* 15,073.40. Now, before the petitioner had received this sum, the ship was captured by an Imperial man-of-war, on the 7th day of the 2nd month of the 37th year of Meiji. In order, therefore, that the petitioner may be enabled to obtain the payment of his claim, he petitions:

First, that the just claim of the subject of a neutral country upon a prize of war may be respected, and that the steamship *Russia* may be released. Even if the above view is inadmissible, the capture of the steamship *Russia*, having taken place at about 7 a.m. of the 7th of the 2nd month of this year, is unlawful, and consequently she ought to be released, for the announcement of the rupture of friendly intercourse between Japan and Russia was made by the former to the latter Government on the 6th of the 2nd month, but it is not specified at what o'clock it was made; therefore the common inference is that it was made at 12 (midnight) of the 6th. This time not being earlier than 8 a.m. of the 7th, in Korea and Japan, the capture took place before the state of war actually existed between the two states.

Secondly, that in case the said ship be not released, it may be adjudged that the petitioner's claim has a prior right upon the prize.

Thirdly, that in case neither of the above requests be granted, it may be adjudged that the petitioner's claim be paid from the public treasury.

The above is the purport of the petition, and to prove the existence of such claim the petitioner produced evidence (A) Nos. 1 to 20.

The substance of the opinion of the Public Procurator is that the argument of the petitioner insisting upon the release of the steamship *Russia* is groundless, but that if the claim of the petitioner was created by defraying expenses necessary to save the ship from destruction or to continue her voyage, such claim may, theoretically speaking, remain inseparable from the prize in case of capture. However, there being no provision in our Prize Court Regulations concerning the subject, it is doubtful whether such decision can be given.

After due consideration, from the evidence produced by the petitioner and the testimony given in this Court by Peter Gruenberg, the master of the *Russia*, we recognise the existence of the claim under consideration. But first, the argument of the advocate of the petitioner that the capture of the said ship was unlawful, having been made before the war, is groundless, as it is clear that the capture

was made after the 6th of the 2nd month of this year, when the state of war commenced between Japan and Russia. And if the ship is a lawful prize, she cannot be released on account of a neutral person having a claim against her. Secondly, even though the petitioner's claim was created by the disbursement of the ship's necessary expenses for continuance of the voyage, a third party has no right to make any claim upon the property, as not only is there no provision in our Prize Court Regulations recognising a prior claim upon a prize, but according to International Law the right of the captor to a prize confiscated as the enemy's property is absolute. Thus the second point of the argument of the petitioner's advocate is also untenable. Thirdly, that the petitioner has no right to claim upon the public treasury is clear from what has been explained; but the question of redemption by the public treasury is beyond the jurisdiction of this Court. Under such grounds the decision as stated in the text has been given.

Given this 26th of the 5th month of the 37th year of Meiji, at the Sasebo Prize Court in the presence of the Public Procurator, Yamamoto.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

VI. Petition for Temporary Attachment of a Prize.

Case. *The Mukden.*

Decision published in the *Official Gazette*, Tokyo, June 22, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court, on the cargo of the Russian steamship *Mukden*, on the 26th of the 5th month of the 37th year of Meiji.

Petition No. V.

Decision.

Petitioner—Yuan-tsu-chuang, Chinese subject, 99, 1-chome, Shimoyamate-dori, Kobe.

Advocate—K. Moriya, Counsellor at Law, 5, Sayegi-cho, Kyobashi-ku, Tokyo.

Advocate—Imamura, Counsellor at Law, 14, 2-chome, Imagawakoji, Kanda, Tokyo.

Advocate—I. Shimidzu, Counsellor at Law, 2, Hiyoshi Cho, Kyobashi-ku, Tokyo.

In the case of capture of the cargo of the Russian steamship *Mukden*, the following decision has been given:

Text of the Decision.

This petition is hereby rejected.

Facts and the Grounds of the Decision.

The gist of the statement of K. Moriya, advocate of the petitioner, is as follows: The Russo-Chinese Bank, a joint stock company, alleges that the petitioner, while officiating in the Bank, had incurred a certain amount of indebtedness to the Bank. The Bank brought an action on the 26th of the 6th month of the 36th year of Meiji, in the Tokyo District Court, demanding the repayment of the sum of *yen* 175,971.10, and on the 25th day of the 7th month of the same year, the Bank brought another action demanding the repayment of the two sums of *yen* 70,000 and *yen* 47,555.54. The petitioner refused to pay the demand of the Bank, and on the 10th of the 7th month of the same year instituted a counter-action against the Bank demanding damages of *yen* 535,307.00 and the lawsuit is now pending in Court. The petitioner having heard that the Russo-Chinese Bank was going to shut its branch office and to withdraw to its own country, petitioned a temporary attachment of the Bank's corporeal movable property in order to secure the execution, and on the 12th of the 2nd month of the 37th year of Meiji, the Tokyo District Court issued an order for attachment of the Bank's corporeal movable property, against the sum of *yen* 359,355.90. When the attachment was enforced according to this order at the Bank, only *yen* 7600 worth of movables was found, leaving a deficit of *yen* 351,735.90. Now, the Russian steamer *Mukden*, which was captured by the Imperial man-of-war *Tatsuta* on the 7th of the 2nd month of the 37th year of Meiji, has in her cargo 10,000 rubles belonging to the Russo-Chinese Bank, and in case the 10,000 rubles be condemned, the petitioner would not be able to attach the above money as mentioned. He, therefore, petitions (1) that the above-mentioned 10,000 rubles may be released as the property of the Russo-Chinese Bank; (2) that when the money is released, procedure may be taken at the same time for the attachment of the property to make secure the execution of the right of action of the petitioner; and (3) that even if the petition No. 1 be not granted, if the property be released for any other reason, procedure may be taken for the attachment of the property to make secure the execution of the right of action of the petitioner. And to prove the above facts the petitioner has produced copies of the order for the temporary attachment, the record of the attachment of the corporeal movable property, and the record of the continuance of attachment of the same.

The gist of the argument of the Public Procurator is that the

petitioner is not entitled to make such petition, as it is clear that he is not directly interested in the money, even from his own statements, and even if it is admitted that he is entitled to make such petition, there is no reason to release the 10,000 rubles on that account; and that the petition for temporary attachment is unlawful as the Procurator thinks that a Prize Court ought not to issue an order for attachment of captured goods.

After due consideration the Court concludes: According to Art. XVI. of the Prize Court Regulations of Japan, an interested party, who desires to make a petition, has to file it within 30 days, counting from the day after the advertisement, and any petition made after the lapse of this period is to be rejected. This Court advertised in the *Official Gazette*, on the 1st of the 3rd month of the 37th year of Meiji, that petition might be made in regard to the 10,000 rubles under consideration, and it is clear that no petition could be accepted after 30 days, reckoning from the day after the advertisement. On examining the petition filed by the petitioner under date of the 18th of the 3rd month of the 37th year of Meiji, it says, ". . . the sum of 10,000 rubles, which is in the cargo of the Russian steamship *Mukden*, belongs to the Russo-Chinese Bank, and if the said 10,000 rubles be condemned as prize, the petitioner will not be able to attach it as corporeal movable property mentioned above, and consequently his interest will be injured." And under the heading of "Request," he says, "The 10,000 rubles carried by the captured Russian steamer *Mukden* may be attached as the property of the Russo-Chinese Bank according to the Order of Temporary Attachment of Movable Property No. 36 of the 37th year of Meiji, issued by the Tokyo District Court." From facts, it is very clear that the object of the petition under consideration is only a request for temporary attachment. At the time of the oral trial on the 20th of the 4th month of the 37th year of Meiji, the advocate of the petitioner made an oral petition requesting release of the 10,000 rubles, and the same day he filed a document of the same purport as an additional petition. But the procedure of temporary attachment, being a measure for guaranteeing compulsory execution, is quite different in its nature from the release of goods, and consequently it is not lawful to supplement a petition for attachment with one for release. If the petition for release be considered a separate petition, the period allowed for making one is passed, and consequently it cannot be accepted. As to the request for attachment, it cannot be granted, as there are no provisions in the Prize Court Regulations from which it may be inferred that attachment of captured goods is granted. Under these grounds the decision, as stated in the text, has been given.

Given this 26th day of the 5th month of the 37th year of Meiji, at the Sasebo Prize Court in the presence of the Public Procurator, C. Minakami.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

VII. Petition in Any Language Other Than Japanese.

Case I. *The M. S. Dollar.*

Decision published in the *Official Gazette* of March 23, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 2nd of the 3rd month of the 38th year of Meiji by the Yokosuka Prize Court in the case of the steamship *Dollar* and her cargo.

No. V.

Decision.

Petitioner—Robert Dollar, President of the M. S. Dollar Steamship Company, 134 California Street, San Francisco, Cal., The United States of America.

In the case of the steamship *M. S. Dollar* and her cargo, the above-named Robert Dollar has filed a petition in English under date of the 2nd of the 2nd month of the 38th year of Meiji, and the following decision has been given:

This petition is hereby rejected.

Ground of the Decision.

It is set forth in Art. XXVI., 3, of the Prize Court Regulations that, in Prize Courts and the Higher Prize Court, the Japanese language shall be used; and no exception is provided for. The petition being in English is contrary to this article and is unlawful. It cannot, therefore, be accepted.

The petition was addressed to the Sasebo Prize Court, but the case of the steamship *M. S. Dollar* not being in the jurisdiction of that Court, the petition was sent to this Court, which Court has decided the case.

Given this 2nd day of the 3rd month of the 38th year of Meiji, at the Yokosuka Prize Court, after hearing the opinion of the Public Procurator of the Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Case II. *The Mukden.*

Decision of the Sasebo Prize Court.

The following decision was given by the Sasebo Prize Court on the 16th of the 6th month of the 37th year of Meiji in the case of the cargo of the Russian steamship *Mukden.*

Petitioner—E. C. Bodenhaus, German merchant, 4, Deshima, Nagasaki.

The above-mentioned Bodenhaus, on the 4th of the 6th month, filed a protest against the decision given by this Court on the 26th of the 5th month of the 37th year of Meiji in the case of the cargo of the Russian steamship *Mukden.* But the document being in the German language and not being signed by a Counsellor at Law of the Empire is in violation of 3rd clause of Art. XXXIII., 1, of the Prize Court Regulations. Therefore the protest is hereby dismissed according to clause 1 of Art. XXXIII., 2.

This decision was given on the 16th of the 6th month of the 37th year of Meiji at the Sasebo Prize Court after hearing the opinion of the Public Procurator, S. Yamamoto.

VII. Some Other Principles.

Besides the above-mentioned principles, some others were adopted by the proper authorities of Japan.

A. On the 3rd of Feb., 1904, it was resolved that all prizes, except men-of-war, shall be adjudged at a Prize Court, no matter whether they are government property or not. (The Higher Prize Court.)

B. Framjee, Sorabjee & Co., of Shanghai, sent in a document requesting repayment of $19.61, the price of certain goods on board the *Hsiping,* which was captured, but the document was returned on the 16th of June, 1904, on the ground that the Higher Prize Court has no authority to accept anything except appeals from decisions of the Sasebo or Yokosuka Prize Court. (Higher Prize Court.)

C. R. Masujima, advocate of the appellant Washily Yulievitch Ecgart(?), requested postponement of decision on the appeal case of the cargo of the *Fu-ping,* but the request was denied on the 16th of August, 1905, because there was no special

reason for the postponement. The same day another request of R. Masujima that the same appellant be permitted to appear before the Court and be examined was also denied on the ground that the Higher Prize Court decides by documents and cannot allow an appellant to appear before the Court. (Higher Prize Court.)

D. On the 5th of March, 1904, the rule governing the procedure of the Yokosuka Prize Court was decided. On that day the following resolution was made:

It is more proper to construe the 2nd clause of Art. XVII. of the Prize Court Regulations in the sense that a foreign petitioner who has appointed a counsellor at law of the Empire his advocate may appear before the Court on the day of trial together with his advocate.

E. Resolutions of the 27th of Feb., 1904:

The Regulations governing Captures at Sea have no power to bind a Prize Court, but the Yokosuka Prize Court shall take them as a standard and shall give decisions so as not to conflict with the spirit of the regulations. (The Yokosuka Prize Court.)

F. In case a ship owner charters his vessel, knowing that she will be employed for the transportation of contraband of war, or in case a master makes a voyage, knowing that the cargo is contraband of war, the ship shall be confiscated together with the cargo, even when the cargo is not the property of the owner of the ship. But in the latter case, if the master is not delegated with ordinary authority, it is otherwise. (The Yokosuka Prize Court.)

G. Resolution of the 20th of the 3rd month of the 38th year:

The master of a captured vessel has the power to represent the owner of the ship or the consignor of the cargo before a Prize Court. (The Yokosuka Prize Court.)

I. Resolution of the 30th of the 10th month of the 38th year:

Request for temporary release of a captured vessel shall not

be permitted, even if the owner deposits security money. (The Yokosuka Prize Court.)

Sect. IV. Procedure of Cases in the Japanese Prize Courts.

To show how Japanese Prize Courts paid attention to the treatment of passengers and crews of captured vessels, dealing with captured goods, contraband and non-contraband, and giving decisions on the cases, the following report of the Sasebo Prize Court is worthy of attention:

I. Reception of Cases.

When notice is received that a captured vessel will be in port, the Councillor in charge of the case shall request the Sasebo Naval Station to order the Prize Officer and the master of the vessel to appear immediately before the Prize Court with the ship's papers.

When the Prize Officer and the master of the ship appear at the Court and deposit a statement, the ship's papers, etc., the Councillor in charge of the case shall unseal the documents in their presence and prepare an inventory of them.

The Councillor in charge of the case, after finishing the foregoing business, shall proceed to the captured vessel and inspect the vessel and cargo in the presence of the master.

When the inspection of the vessel and cargo is finished, the President shall entrust the care of the vessel and cargo to the commander-in-chief of the Sasebo Naval Station.

Remarks. In the third clause of Article XI. of the Prize Court Regulations it is stated:

"After the preparation of the inventory, the Councillor shall inspect the captured vessel and cargo, and shall prepare a minute inventory of the goods in the presence of the master"; but as it is often impossible to inspect the goods on board, unless landed, only the more important particulars of the visit are recorded in the report of such cases, leaving the minute inspection of the goods and preparation of the inventory to a later date.

II. Examination of the Crew and Passengers.

When the Councillor in charge visits the captured vessel, he shall examine the names and nationalities of the crew, comparing them with the muster roll, etc., and enter the particulars in his report.

When there are passengers, they shall be examined as soon as possible, and those not required to be detained shall be set at liberty immediately.

The data to be procured from the master (and other members of the crew) are roughly as follows:

Name, age, occupation, place of birth, and present residence.

Name of the vessel, her nationality, class, owner (or charterer), home port, and tonnage; the date and place of launching, her flag, and commission.

Years and months in service.

Whether there are passengers or any military men aboard.

The facts of capture and detention, and steps taken by the master on the occasion.

The course the vessel was taking at the time of capture, the place she left, the place whither she is bound, and the places at which she has called.

Nature, quantity, ownership, prices, consignees and consignors of the cargo, the place where it was taken on board and where it is to be landed.

Whether her papers are perfect or not; whether they are false, altered, thrown away, etc.

Any change in the crew and cargo before or after the capture.

Whether the present war had been expected or not.

Remarks. Of the crews and passengers examined, Sub-Lieutenant Shevelioff (?), of the Russian Navy, on board the British steamship *Nigretia*, and one or two others, refused to sign the record of the examination. Sub-Lieutenant Shevelioff wrote a statement that, though he acknowledged the correctness of the record, he could not sign his

name to anything written in the Japanese language, and signed the statement.

III. Inspection of Goods.

To inspect a cargo, the list shall be first translated, and one copy sent to the Port Admiral's Office and another copy to the Director of Finance. Then the Councillor in charge and a clerk of the Court, together with members of the Port Admiral's Office, shall inspect the goods on the vessel, comparing them with the list. The inspected goods are then taken to the quay in lighters, where they are delivered by the members of the Port Admiral's Office to members of the Director of Finance, who take them to the storehouses.

When necessary, the personal effects of the crew may be inspected.

When the inspection is finished, the Councillor in charge shall prepare an inventory of the goods.

Remarks. Goods such as flour, salt, etc., which are in bags, are easily damaged by taking them in lighters and from the quay to the storehouses. Damages of 5 or 6 bags in every 100 cannot be avoided, even when handled with proper care.

Cargo consisting of coal alone generally does not need to be inspected; but cargo consisting of miscellaneous goods requires minute inspection. At the beginning of the war, when several captured Russian vessels were brought to port simultaneously, there was no time to inspect their cargoes, and they were inspected later on. The cargoes of the British steamers *Hsiping* and *Pei-ping*, which were captured in the 7th month, were landed and inspected. After that time cargoes so inspected were not a few. The time required for inspection of the cargoes of some of the captured vessels was as follows:

Bawtry (1542 tons, reg.)—40 fair days (employing 10 lighters and about 60 workmen).

Aryol (7662 tons, reg.)—20 fair days (same as above). (*Aryol* being a hospital ship was not fully laden.)

Veteran (820 tons, reg.)—14 fair days (same as above).

Hsiping (1266 tons, reg.)—12 fair days (same as above).

Lydia (447 tons, reg.)—8 fair days (same as above).

Pei-ping (326 tons, reg.)—4 fair days (same as above).

In the British steamship *Shishan*, there were on the upper and middle decks several hundred cows and sheep suffering from cattle plague, and in the hold there were loaded provisions. Officers of the Nagasaki Quarantine Office came to the ship, killed the infected animals, and took every measure to prevent further infection. The Councillor in charge inspected the goods in disinfected clothes.

Inspection of cargoes is one of the most troublesome duties of a Prize Court. Tens of thousands of packages must be examined, comparing them with the lists. In the case of iron and steel wares, it is impossible to decide whether they are contraband of war or not, unless the packages are opened and the goods examined. Goods to be released must also be examined to ascertain that they do not differ from the descriptions they bear. Moreover, the inspection must be done promptly and only a reasonable time can be allowed for the work. The labour of the Councillor in charge and the clerk is immense.

IV. Inspection of Letters, Landing of Crews and Passengers and the Reception of Visitors by the Crews and Passengers.

The landing of the crews and passengers is allowed, so long as it is not prejudicial to trials.

Remark. The Court construes that it has authority to inspect correspondence from the necessity of conducting trials.

In the 2nd month of the 37th year of Meiji, while the Norwegian steamer *Helmes* was being tried, the representative of the Norwegian Consul at Kobe appeared at the Sasebo Prize Court and demanded to be allowed to be present at the trial and other examinations, according to Art. XV. of the treaty between Japan and Germany concerning the duties of consular officers.

But the treaty not being applicable to the trial of prizes, which is the exercise of a belligerent right, the demand was refused. The representative was, however, permitted to see the master at the Court.

V. Release of Crews and Passengers.

When there is no need of detaining the crew, etc., of a captured vessel, the Councillor in charge of the case having finished his examination and the Public Procurator having submitted his opinion that the ship and cargo should be confiscated, the Councillor in charge of the case shall proceed to the vessel and hand the master a document stating that the

examination of the vessel has been finished, and that there is no need of the crew remaining on the vessel, telling the master also the reasons.

When there are passengers, they shall be ordered to leave the vessel, together with the crew.

The master and other members of the crew shall be permitted to take with them not only their personal property, but also telescopes, chronometers, and other articles, if they declare and explain that such articles are their private property.

When the crew and others finish their preparations for departure, the Naval Station shall take them to Nagasaki in its own steamer and release them there.

When the crew and others depart, the Nagasaki Customs shall be notified that the crew and others have left for Nagasaki with their personal property. (This notice is sent by the request of the Nagasaki Customs.)

Remarks. Up to the 12th month of the 37th year of Meiji, notices to release crews were sent by the President to the Commander-in-Chief of the Naval Station, stating that there was no need of detaining them, and the Naval Station proceeded to release them.

But on the 3rd of the 1st month of the 38th year of Meiji, at the time of the release of the crew of the British steamer *Nigretia*, when an officer of the Station proceeded to the vessel and told the crew to leave, the master declared that he would not leave unless he received the order from the Prize Court.

Since that time, by the request of the Sasebo Naval Station, the Councillor in charge of the case proceeds to the vessel and makes the notification himself.

VI. Advertisement of Vessels and Cargoes.

The advertisements referred to in Art. XVI. shall be made in the *Japan Mail*, of Yokohama, the *Kobe Herald*, and the *Nagasaki Press*.

Remarks. In the last part of Art. XVI. of the Prize Court Regulations, it is stated, "The Court shall publish an advertisement in the *Official Gazette* and in two foreign newspapers published in the Empire." Therefore, at first, advertisements were published in two papers only, the

Japan Mail and the *Nagasaki Press*. But it is more proper to construe the clause as an order to advertise in two papers at least, and not as a prohibition to advertise in more than two.

Besides, there was no reason to except Kobe while advertisements were made at Yokohama and Nagasaki. Thus from the advertisement of the *Hsiping* in the 8th month of the 37th year of Meiji, advertisements were made in the above three papers. Concerning the form of advertisement, sometimes the whole list of goods was advertised; sometimes the gist only.

VII. Trial and Decision.[1]

The trial of the Prize Court shall not be open, but those who are deemed fit may be admitted.

Concerning the recovery of damages, freight of goods, and other expenses, the Prize Court shall have no jurisdiction.

Demands for temporary attachment of vessels and cargoes shall be dismissed.

Demands for ascertainment of bottomry against vessels shall be dismissed.

Bottomry attached to a vessel shall not be acknowledged.

Requests for intervention shall not be accepted.

In case an advocate is appointed by telegram, such appointment shall not be valid unless the telegram is replaced by a regular document within a period designated by the Court.

A petition made by telegram shall be dismissed.

In case a person files a petition, it shall not be dismissed but an oral trial shall be held, even if it can be inferred from the document that the petitioner is not an interested party.

When a foreign Consul files a petition on the ground that he is a guardian of the interests of his countrymen, he shall not be considered an interested party on that ground alone.

Concerning cargo, the master may file a petition as an interested party, even if he is not specially delegated by the owner to do so.

The shipping agent may also make a petition regarding the goods.

[1] Some of the statements in this subsection are repetitions of what has been mentioned in a former chapter. The author deems the facts of which they treat worthy of a second emposie.

The Court shall summon witnesses and assayers only when the party requesting the witnesses and assayers defray traveling and other expenses.

In case it becomes clear after the oral trial that the petitioner is not an interested party in regard to the ship or cargo and that the petition ought to be dismissed, the dismissal shall be stated, for convenience, together with the decision for the confiscation of the ship and cargo.

In case it is impossible for any of the Councillors who took part in an oral trial to sign the decision, the President shall state in the decision the reason for the absence of the signature of such Councillor.

The period allowed for making protest shall be reckoned from the next day after the decision is pronounced.

The following matters shall be done in the name of the President:

Dismissal of a petition made by telegram.

Permission or refusal of a request for extension of the period for filing a petition, or any other periods.

Dismissal of a petition that does not conform to the form, or which has passed the prescribed period.

The word "form," employed in Art. XXIII., 2, of the Prize Court Regulations, refers to the conditions mentioned in Art. XXIII., and does not include the case of the absence of a power of attorney.

VIII. Fees and Stamps.

Procedure in prize cases do not require fees or stamps.

Remarks. A foreigner, in applying for a copy of a decision, proposed to pay a fee, but it was not accepted.

Not only petitions, but also powers of attorney (written in Japanese), requests for inspection of records, etc., are not required to be stamped.

IX. Execution of Decisions.

When it is decided that a vessel or cargo is to be released at once, the Public Procurator shall summon the master to the

Court, hand him a copy or abridgment of the decision, and explain to him the purport of the decision.

The Public Procurator shall then prepare a report of the execution of release.

When a decision confiscating a vessel or cargo becomes conclusive, the Public Procurator shall deliver it to the Commander-in-Chief of the Naval Station.

X. Returning Ships' Papers.

In case a ship and cargo are released, the ship's papers and papers regarding its cargo shall be returned.

In case of the confiscation of a vessel, when the master or the Consul concerned applies for the ship's papers, those not required for trial may be restored.

CHAPTER II.

ENEMY VESSELS.

Sect. I. Russian Vessels.[1]

It was Russia who, when dealing with merchantmen, did not hesitate to sink them—not only enemy vessels, but even neutrals. Japan, however, instead of sinking merchantmen, captured, with the exception of hostile warships, all illegal vessels, such as enemy vessels, contraband carriers, blockade runners, etc., and Japan is very proud of the following cases of Prize Law:

Case I, a. *The Argun.*

Published in the *Official Gazette*, Tokyo, April 29, 1904.

Decision of the Sasebo Prize Court.

The following decision was given on the 26th of the 5th month of the 37th year of Meiji, by the Sasebo Prize Court in the case of the Russian steamship *Argun.*

Petition No. I.

Decision.

Petitioner—The Eastern Chinese Railroad Company, St. Petersburg, Russia.

Representative—Wentzel (?), Vice-President.

Advocate—W. Nagashima, Counsellor at Law, 10, Kaga Cho, Kyobashi Ku, Tokyo.

Advocate—N. Hidaka, Counsellor at Law, 10, Kaga Cho, Kyobashi Ku, Tokyo.

In the case of the Russian steamship *Argun,* the following decision has been given:

[1] As is shown in the table in Part V., Chapter I., there were several cases concerning enemy vessels as well as neutral vessels. It is not desired to describe all of them, because many of the cases were very similar when viewed from the standpoint of International Law. Only the typical cases, about one-third in number, are taken as illustrative.

Text of the Decision.

The steamship *Argun* and 311 rubles of Russian money belonging to her are hereby confiscated.

Facts and the Grounds of the Decision.

The steamship *Argun* is the property of the Eastern Chinese Railroad Company of Russia, and is a vessel employed for the transportation of passengers, freight, and mail. Her usual home port is Dalny, China, which is situated in the district leased to Russia. The ship left Dalny on the 6th of the 2nd month of the 37th year of Meiji, and on her way to Nagasaki, Japan, on the 7th of the same month, at about 4 p.m., she was captured by the Japanese man-of-war *Adzuma* in the neighbourhood of Phal-ku-pho on the southwestern coast of Korea. The ship was then delivered to the man-of-war *Tainan Maru*. The 311 rubles of Russian money were on board the ship at the time of capture.

The above facts are admitted by the advocate. From the statement produced by Lieutenant N. Yoshimura, I.J.N., representative of the Captain of the *Tainan Maru*, the testimony given by the master of the ship, Karl Gertner, and the first mate, Alexander Schebinin, the certificate of the ship's nationality, certificate of tonnage, certificate that the ship has passed examination, her log-book, etc., makes the case a very clear one.

The purport of the plea of the petitioner's advocate is as follows:

(1) It is a rule in International Law that the state of war begins with the opening of actual hostilities. The ship under consideration was captured on the day before the sea fight of Port Arthur, that is, before the opening of actual hostilities. She ought, therefore, to be released.

(2) The steamship under consideration is a merchantman, and is entitled to enjoy the privilege given by the Imperial Ordinance No. XX. of the 37th year of Meiji.

(3) The steamship carried mail and ought, therefore, to be released, in accordance with the opinion of authorities on International Law.

(4) If the ship is to be released, the money belonging to her ought also to be released.

(5) The capture was made in Korean territorial waters; therefore the question whether Korea was neutral or not, must be specially considered.

Besides the above, the advocate argues that the ship ought to be released, as the people of the enemy's state are apprised of the

commencement of war by declaration, and as the capture took place prior to such declaration.

The gist of the opinion of the Public Procurator is that the plea under consideration has no ground, and the ship and the money belonging to her ought to be declared lawful prize.

After due consideration the Court concludes as follows:

When diplomatic negotiations concerning the Manchurian and Korean questions were going on between Japan and Russia, the latter country unreasonably failed to give her answer to Japan. On the other hand, she showed great activity in her army and navy, sent her land forces to Manchuria and Korea, collected her war vessels at Port Arthur, and thus showed her determination to fight. This fact was clear.

Whereupon Japan, on the 5th of the 2nd month of the 37th year of Meiji, notified Russia that all diplomatic relations were at an end.

At the same time Japan made preparations for action and the next day, the 6th at 7 a.m., her fleet left Sasebo with the object of attacking the Russian fleet. Inferring from the conduct of the navies of both countries and from the state of things at the time, that hostile operations were publicly opened prior to the capture of the steamship now under consideration; and as it is thus clear that a state of war had begun before the time of the ship's capture, there is no need to discuss whether it was made before the declaration of war or not. As to the Imperial Ordinance No. XX., it took effect from the day of its promulgation, that is, from the 9th of the 2nd month of the 37th year of Meiji, and is therefore not applicable to a case that occurred before its promulgation. Moreover, according to the articles of the marine transportation department of the Eastern Chinese Railroad Company, to which the ship belongs, all the vessels belonging to that department are, in time of war or emergency, to be furnished for use by the Russian Government, and her army and navy. Thus, if she be released, she will increase the enemy's force. How can the ordinance which gave favour to harmless merchant vessels be construed as applicable to such kind of vessels also? In regard to the enemy's mail ships, it is recognised in International Law that they are liable to capture, unless there be a special agreement between the belligerents. The argument of the advocate is nothing more than an opinion of scholars and cannot as yet be adopted. Concerning the neutrality of Korea, it is clear that she was not *de facto* neutral, and, consequently, a capture made in her territorial waters cannot be said to be unlawful. In a word, the petition has no ground, and the steamship *Argun* is a lawful prize. Consequently

the money belonging to her is also liable to confiscation. Therefore, the decision as stated in the text has been given.

Given this 25th day of the 5th month of the 37th year of Meiji, at the Sasebo Prize Court, the Public Procurator, S. Yamamoto, being present.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case I, b. *Cargo of the Argun.*

Published in the *Official Gazette*, on March 12, 1904.

Decision of the Sasebo Prize Court.

Decision.

In the case of the Russian merchantman *Argun* and her cargo, captured by the Imperial man-of-war *Adzuma* near Phal-ku-pho, south-western coast of Korea, on the 7th day of the 2nd month of the 37th year of Meiji at about 4 p.m., the decision given relative to the goods mentioned in the annexed list, after examining the written opinion of the Public Procurator, is as follows:

The goods mentioned in the annexed list were taken on board by the *Argun* at Dalny, Manchuria, China, on the 6th day of the 2nd month of the 37th year of Meiji, to be transported to Nagasaki, Japan. From the freight list, nature of the goods, date of loading, etc., it is evident that they were the property of persons having residence in the Empire, and as there is no circumstance which justifies their condemnation, they were released, notwithstanding that the capture was lawful.

Given this 24th day of the 2nd month of the 37th year of Meiji.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

LIST OF THE GOODS.

Goods.	Number of Packages.	Consignor.	Consignee.
Furniture.....	9	Umeda	Kobayashi
Soy.....	45	Oishi	Oishi
Empty casks.....	6	Hirose	Tsutsui
Beer.....	4	"	"
Furniture.....	1	Nissei Yoko	Nissei Yoko
Hats.....	1	Shipping Agent of the East China R.R. Co.	Shipping Agent of the East China R. R. Co.
Bed-clothes.....	1	"	"
Clothing.....	3	"	"
Soy.....	35	"	"

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on March 29, 1905.

The following decision was given on the 25th of the 4th month of the 38th year of Meiji by the Higher Prize Court in the case of the Russian steamship *Argun*.

Case No. XXIII.

Decision.

Petitioner—The Eastern Chinese Railroad Company, St. Petersburg, Russia.

Representative—Wentzel (?), Vice-President.

Advocate—W. Nagashima, Counsellor at Law, 10, Kaga Cho, Kyobashi Ku, Tokyo.

A protest has been filed by W. Nagashima, Counsellor at Law, advocate of Wentzel, Vice-President and representative of the petitioner, the Eastern Chinese Railroad Company of St. Petersburg, Russia, against the decision of the Sasebo Prize Court, given on the 26th of the 5th month of the 37th year of Meiji in the case of the Russian steamship *Argun*, belonging to the Eastern Chinese Railroad Company of St. Petersburg, Russia, which ship was captured by the Japanese man-of-war *Adzuma* near Phal-ku-pho, on the southwestern coast of Korea, on the 7th of the 2nd month of the 37th year of Meiji. The original decision condemned the ship and the 311 rubles belonging to her. The protest has been tried before this Court, the Public Procurators, K. Tsuzuki and B. Ishiwatari, taking part.

(Here the statement is omitted to avoid repetition of the original decision.)

The decision of this Court is explained as follows:

In (1) of the protest the advocate argues that the state of war commences with the opening of actual hostilities, and as hostilities actually opened between Japan and Russia on the 8th of the 2nd month of the 37th year of Meiji, the ship ought not be confiscated. But the commencement of the state of war does not necessarily lie at the moment when two armed forces open fire upon each other, but rather at the time when the intention of making war is made public, that is to say, at the time when such intention is carried into effect, or when by a declaration of war or otherwise any such notification is made. And as the intention of making war had been publicly announced on the 6th of the 2nd month of the 37th year of Meiji, before the battle was fought at Port Arthur on the 8th, the state of war already existed on the 7th; and the argument of the advocate that the war commenced on the 8th has no ground.

In (2) of the protest the advocate argues that the ship ought to have been exempt from capture under Imperial Ordinance No. XX. of the 37th year of Meiji; and that the original decision is improper in adjudging the capture as lawful, on the ground that the ordinance took effect from the 9th of the 2nd month, the date of its promulgation, and was not applicable to a case that occurred prior to that date; and on the further ground that an ordinance which is applicable to harmless merchantmen cannot be applied to vessels such as the one under consideration, which belong to the Eastern Chinese Railroad Company, and which, in time of war or emergency are furnished for use by the Russian Government's Army and Navy.

In examining the nature of the vessels belonging to the Eastern Chinese Railroad Company, it will be seen that the managers of the Marine Transportation Department of the same company are naval and other government officers. One of the managers at Vladivostock is a Lieutenant-Commander in the Russian Navy, and another is an official of the Russian Treasury Department. In a book entitled "River Vessels in Russian Asia," published by the Russian Department of Communication in 1902, there are statistics of vessels afloat in the basin of the Amur River. Of the total number of 163 steamers and 196 sailing vessels, those which belong to the Government are put down as 45 steamers and 66 sailing vessels. On examining the owners of these vessels, it will be found that the above number of the Government's vessels cannot be accounted for unless the 19 steamers and 60 sailing vessels belonging to the Eastern Chinese Railroad Company are included among them. In the Boxer trouble of the 33rd year of Meiji, indemnity for the damages received by the Eastern Railroad Company was demanded, not as damages received by Russian subjects, but as those incurred by the Russian Government. Inferring from these facts that vessels belonging to the Eastern Chinese Railroad Company, such as the ship under consideration, must be taken as official vessels belonging to the Russian Government. Now the Imperial Ordinance No. XX. may seem, on first sight, to be applicable to all Russian merchantmen, but as the principal object of its promulgation was to exempt from the hardship of capture those Russian merchant vessels of private ownership which could not know of the fact of the commencement of hostilities beforehand, and which were in Japanese ports or were *en route* for them, having left foreign ports before the ordinance took effect, there is no doubt that Government vessels such as the one under consideration are not entitled to the privilege given by that ordinance. Therefore, although the reason given by the original Prize Court that the ordinance is not applicable to cases that occurred before it took effect may be improper, as the

advocate argues, yet the protest is groundless for the reason given above.

In (3) the advocate argues that at the time of her capture the ship had mails on board, and she ought to be released in accordance with the opinion of scholars and the most advanced principles of International Law. But the fact of an enemy's vessel carrying the mails is not recognised in the International Law now in force, or in the laws of Japan, as a ground of exemption from capture, so that this point of the protest is overruled.

In (5) the advocate argues that the ship was captured in the territorial waters of Korea, and in giving a decision it is of great importance to make clear whether that country was a neutral or an ally; and he regrets that the original Prize Court did not clearly explain the status of Korea. But in the Russo-Japanese War, not only did Korea consent from the first to the landing and passage of the Japanese Army, but in the earlier part of the war battles were fought in her dominion. Thus she cannot be considered as a neutral in the ordinary sense of the word, and consequently the protest is overruled on that point also.

In (6) the advocate argues that the people of the enemy's state are apprised of the commencement of hostilities by the declaration of war, and as the capture was made prior to such declaration, the ship ought not to be condemned. But it is recognised in International Law now in force, that when once hostilities are opened, a belligerent can exercise the right of capture upon the private property of the hostile subjects, whether they are apprised of the commencement of war or not. The protest is groundless on this point also.

In (4) the advocate argues that in case the ship is to be released, the money belonging to her ought to share the fate of the ship and to be released together with her. But since the capture of the ship is lawful and there is no reason to release her, as has been explained in connection with several grounds of the protest, there is also no reason to release the money belonging to the ship captured with her.

The decision of the Court is, therefore, as follows:

This protest is hereby rejected.

Given this 25th of the 4th month of the 38th year of Meiji at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case II. *The Bobrick.*

Published in the *Official Gazette*, Tokyo, on May 18, 1904.

Decision of the Yokosuka Prize Court.

The following decision was given on the 18th of the 5th month of the 37th year of Meiji, by the Yokosuka Prize Court in the case of the Russian sailing vessel *Bobrick*:

Decision.

In the case of the Russian sailing vessel *Bobrick*, captured at Hakodate by the Japanese man-of-war *Takao*, on the 17th of the 2nd month in the 37th year of Meiji, examination has been held and the following decision given:

Text of the Decision.

The sailing vessel *Bobrick* is hereby confiscated.

Facts and the Grounds of the Decision.

The sailing vessel *Bobrick* is the property of the Kamtchatka Mercantile and Industrial Company, St. Petersburg, which is engaged in fishing and hunting in Kamtchatka, Russia. The vessel registered at Vladivostock, has a license to fly the Russian merchant flag, and is principally employed in transporting fish and animals caught and in carrying stores and fishermen to the fishing grounds. The vessel entered the port of Hakodate on the 19th of the 10th month of the 36th year of Meiji, and remained there; and on the 6th of the 2nd month of the 37th year of Meiji the war broke out between Japan and Russia. On the 9th of the same month, an Imperial Ordinance was promulgated concerning the exemption of Russian merchantmen from capture, and the Captain of the Imperial man-of-war *Takao* gave an order to the *Bobrick* to leave Japanese waters within the days of grace prescribed in that ordinance; that is, not later than the 16th of the 2nd month. On the 12th of the 2nd month a report was received to the effect that part of the Russian fleet was coming to attack Hakodate, and at 11 a.m. of the same day, the Captain of the *Takao*, as a measure of naval exigency, gave orders to the agent of the *Bobrick* through the Hakodate Water Police, forbidding the vessel to leave port until further orders. Before long the necessity of detaining the vessel disappeared, and on the 13th, at 9 a.m., a third order was given through the Hakodate Water Police cancelling the second order by which the vessel's departure was prohibited, and permitting her to leave port not later than the 16th. When the first order enjoining the vessel's departure before the 16th of the 2nd month was received, the agent of the *Bobrick* telegraphed to Smith, Baker & Co., of

Yokohama, enquiring whether a crew could be engaged to navigate the vessel. An answer was received in the affirmative, but then the vessel was, for the time, forbidden to depart, and the agent had stopped negotiating the engagement of a crew. On receiving the third order on the 13th permitting the vessel to leave, the agent petitioned the Captain of the *Takao* to extend the days of grace, but this was refused. The vessel did not leave Japanese territorial waters within the days of grace, and on the 17th of the 2nd month at 9.30 a.m., the Captain of the *Takao* sent J. Tajima, an officer of the ship, to capture the *Bobrick* in accordance with the provisions of the Japanese Regulations governing Captures at Sea.

The above facts are clear from the reports of the Captain of the *Takao* and of J. Tajima, an officer of the same ship, from the testimony given by the said J. Tajima and John Andrew Wilson, proprietor of Howell & Co., the agent of the *Bobrick*, and from the license of navigation, a letter from the Captain of the *Takao* addressed to the Councillor in charge of the case in answer to enquiries, and a letter from the before-mentioned Wilson addressed to the Councillor in charge of the case, etc.

The purport of the petition of the Kamtchatka Mercantile and Industrial Company is as follows:

The *Bobrick* is the property of a private concern established with the object of making profits, and is a vessel employed for purely commercial purposes. She ought not, therefore, to be captured. It is a general principle of International Law that hostile acts should be restricted to states, and individuals should not be aggrieved. On land, the inviolability of private property is a fundamental principle, which has exerted influence upon the rules of maritime warfare, and the practice of capturing an enemy's private property at sea, authorised from old, has been gradually restricted. Nor is this tendency shown alone by the arguments of international jurists, for the principle has been adopted by great Powers, such as Germany, Austria, Italy, and the United States. In a word, the unreasonableness and inconvenience of captures at sea is universally acknowledged, and the abolition of the practice is the desire of the world. The petitioner, therefore, prays the Court to release this sailing vessel in accordance with justice. Besides, there are circumstances in the capture that must be taken into consideration. The vessel was treated as a merchantman, and on the 9th of the 2nd month she was ordered, according to Imperial Ordinance No. XX. of the 37th year of Meiji, to leave Japanese waters within a week. Before this period had expired, that is, on the 12th of the 2nd month, the second order was received prohibiting temporarily the vessel's departure. The negotiation to engage a crew,

which was opened at Yokohama, was thus stopped, and when the third order, cancelling the prohibition of the vessel's departure, was received, there were only three days left for the vessel to depart. It was impossible to engage a crew in that short period, and a petition was, therefore, presented to the authorities asking for an extension of the days of grace. The petition was, however, denied and the vessel was captured on the expiration of the days of grace prescribed in the Imperial Ordinance. The capture was, therefore, improper, and for this reason also, the vessel ought to be released.

After due consideration the Court concludes as follows:

The inviolability of private property, mentioned in the former part of the petition, is recognised in modern International Law as regards land warfare; but at sea the principle has never been recognised as a rule, nor has it been adopted in the Japanese Regulations governing Captures at Sea. Concerning the latter part of the petition, the Captain of the *Takao*, from strategical necessity, prohibited temporarily the vessel's leaving port and the agent stopped negotiating the engagement of a crew. There was sufficient time for the vessel to make all preparations and leave port before the expiration of the days of grace. This time was not, however, utilised and the vessel was at last captured. The act of the Captain of the *Takao* in capturing the *Bobrick* was not unlawful.

Concerning the nature of the vessel there is some contention, the petitioner saying that she is a merchantman, and the Public Procurator saying that she is a tender of open-sea fishing boats. But as the vessel was captured on the expiration of the days of grace, there is no need to determine her nature in this decision.

On the above grounds the vessel is liable to condemnation, and the decision as stated in the text has been given.

Given this 18th day of the 5th month of the 37th year of Meiji, at the Yokosuka Prize Court, S. Uchida, Public Procurator of the Yokosuka Prize Court, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Yokosuka Prize Court.

Case III. *The Ekaterinoslav.*

Decision published in the *Official Gazette*, Tokyo, on June 7, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 26th of the 5th month of the 37th year of Meiji by the Sasebo Prize Court in the case of the Russian steamship *Ekaterinoslav* and cargo.

Petition No. II.

Decision.

Petitioner—Russian Volunteer Fleet Company, St. Petersburg, Russia.

Representative—Peeln Foliff (?), Chairman of the Board of Managers.

Advocate—R. Masujima, Counsellor at Law, No. 14, Yamashita Cho, Yokohama.

In the case of the Russian steamship *Ekaterinoslav* and cargo, the following decision has been given:

Text of the Decision.

The steamship *Ekaterinoslav* and the 22 rifles, 5 pistols, 3 boxes of ammunition, 1600 rubles in cash, 31 pieces of furniture, 4 articles of clothing and bedding, 1 musical instrument, 1 article to be used in a factory, 1 piece of smith's tool, 1 piece of fur and 2 other articles, 1 cupboard, 2 pieces of silk fabrics, copper cases and other articles, in all 156, and 1 article of clothing, are hereby confiscated.

Facts and the Grounds of Decision.

The steamship *Ekaterinoslav* is the property of the Volunteer Fleet Company of Russia, flying the Russian flag and with Odessa as her usual home port. On the 4th of the 2nd month of the 37th year of Meiji, she left Vladivostock for Odessa with the above-mentioned goods on board. On her way to her destination, on the 6th of the same month at about 9 a.m., she was captured by the Japanese man-of-war *Saiyen*, 3 miles north of Fusan, Korea, that is, in N. Lat. 35° 7′ and E. Long. 129° 13′.

The above facts are acknowledged by the petitioner's advocate, and are also clear from the statement and the certificate as to the money and valuables on board the prize submitted by Lieutenant N. Yoshimura, I.J.N., representative of the Captain of the man-of-war *Saiyen*; from the invoices, certificate of the ship's nationality, and log-book; and from the testimony given by George Selikky, master, Vladimir Paterimonovitch Kisimoff, first mate, and Peodor Luibakoff, second mate, of the *Ekaterinoslav*.

The purport of the advocate's plea is as follows:

I. The ship under consideration had never been fitted out for warlike purposes, had never engaged in the transportation of contraband of war, nor had she any such goods on board. She ought, therefore, to be exempt from capture in accordance with (3) of Art. XXIII. of the Rules of Capture at Sea resolved upon by the Institute of International Law at Turin in 1882.

II. The ship was captured 3 miles off the Korean coast. Korea being a country considered by Japan as an independent state and the place of capture being within the 6 miles now generally taken as the limit of territorial waters, the capture must be considered as having been made in the waters of a neutral country, and should be adjudged unlawful in accordance with the amendments resolved upon by the Institute of International Law at Paris in 1895, and Arts. VIII. and IX. of the aforesaid Rules of Capture at Sea.

III. The ship was on her way from Vladivostock to Colombo, and was first apprised of the outbreak of the war on being captured. She ought, therefore, to be exempt from capture in accordance with Art. VI. of the aforesaid Rules of Capture at Sea.

Moreover, hostilities are restricted to belligerent states, and their subjects should not be exposed to the direct influence of war before its declaration. A ship and cargo such as those under consideration, which were captured on the 6th of the 2nd month, that is, before declaration of war, should, therefore, be released. Furthermore, as the spirit of the Imperial Ordinance No. XX. of the 37th year of Meiji was to exempt from capture vessels ignorant of the opening of the war, a ship such as this one, which left the enemy's territory without any knowledge of the outbreak of hostilities and was bound to Colombo, a neutral port, should not be captured.

IV. The inviolability of private property at sea as well as on land is advocated by modern scholars and authorities. It was resolved upon by the Institute of International Law at Turin in 1882, and was also submitted to the International Peace Conference of The Hague in 1887. Thus it is a principle recognised as well by states as by private persons. International law consisting, besides agreements entered into by the Powers, of principles declared by jurists and by the Powers as occasion requires, changes with the progress of the world and the times. A state must, therefore, consider the condition of the time and the general opinions of jurists, to adopt the most advanced principles. The 22 rifles, 5 pistols, and 3 boxes of cartridges were carried by the ship for her own defence, as is the case with any steamship, and it is very clear from Art. XXXII. of the above-mentioned Rules of Capture at Sea that they cannot be considered as contraband of war. The advocate, therefore, requests that the ship with her whole cargo be released.

The gist of the opinion of the Public Procurator is as follows:

The ship under consideration is an enemy vessel captured after the outbreak of hostilities. Moreover, Korea was not a neutral country. Consequently, the capture was lawful and the ship ought to be condemned. As to the cargo, the goods such as furniture and cloth-

ing, which must be considered as personal property, should be released, and all the others be condemned.

After due consideration, the Court concludes as follows:

The points to be discussed in the case under consideration are, firstly, whether the Rules of Capture at Sea resolved upon by the Institute of International Law at Turin in 1882, the amendments resolved upon the same association at Paris in 1895, etc., are to be applied to the case or not; secondly, whether the capture under consideration was lawful or not; and, thirdly, whether the ship and the whole of her cargo are liable to condemnation or not.

I. As to the first point, the argument of the advocate that International Law consists, besides agreements entered into by the principal Powers, of the declarations made by jurists and by the Powers as occasion requires, is true; but the declaration of a state and the resolution of jurists cannot be said at once to become the rules and precedents of International Law in force. The Rules of Capture at Sea resolved upon by the Institute of International Law at Turin in 1882, the proposals of the International Peace Conference of 1887 at The Hague, and the amendments proposed by the Institute at Paris in 1895, cited by the advocate, are nothing more than the desires of jurists or an expression of intention by the Powers to consider the question. They cannot, therefore, be applied to the case under consideration, and the advocate's plea on this point is inadmissible.

In order to make the second point clear, it is necessary to discuss whether the capture was made before or after the opening of the war. When diplomatic negotiations were opened between Japan and Russia concerning the Manchurian and Korean questions, the latter Power unreasonably delayed giving her answer to Japan. On the other hand, she landed her forces in Korea and collected her squadron at Port Arthur; and it is a fact that Russia had shown by her warlike activities her determination to open hostilities against Japan. Whereupon Japan, on the 5th of the 2nd month of the 37th year of Meiji, despatched a notice to Russia that all diplomatic relations with her were at an end. At the same time Japan made preparations for war and the next day, the 6th, at 7 a.m., her fleet left Sasebo with the object of attacking the Russian fleet, thus inferring from the conduct of the Japanese and the Russian fleets and the state of things at the time, that hostilities were publicly opened before the capture of this ship, and it is clear that a state of war then existed. The advocate argues that a declaration of war is indispensable for the information of the subjects of belligerent states, and that a capture before such declaration is unlawful. But in modern International Law it is generally recognised that a declaration is not necessary before opening

hostilities, and the advocate's argument is groundless on this point. As to the place of the capture, even if it is admitted that a place three miles from the shore is within territorial waters, it cannot be said to be unlawful, as Korea was not *de facto* a neutral state. Again, an enemy vessel is liable to capture whether she knew of the opening of war or not. This is recognised in International Law; and there is no reason why being in ignorance of the outbreak of hostilities on the part of the ship should make the capture unlawful. As to Imperial Ordinance No. XX. of the 37th year of Meiji, it is a privilege of exemption granted to Russian merchant vessels in Japanese ports, or to those that left foreign ports for Japan before the 10th of the 2nd month. And even if this ship were bound for Colombo, the ordinance cannot be applied to her. Thus the capture was lawful.

As to the third point, it being clear from the above facts that the ship under consideration is an enemy vessel, the 22 rifles, 5 pistols, and 3 boxes of cartridges, carried for her own defence, and the 1600 rubles in cash with which to pay the crew, partake of the enemy character and are confiscable together with the ship. The other parts of the cargo mentioned in the text being goods in transit from Vladivostock to Odessa, are all enemy goods and also liable to confiscation. Therefore the decision as stated in the text has been given.

Given this 26th day of the 5th month of the 37th year of Meiji at the Sasebo Prize Court, the Public Procurator, C. Minakami, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on June 7, 1905.

The following decision was given on the 30th of the 5th month of the 38th year of Meiji by the Higher Prize Court in the case of the Russian steamship *Ekaterinoslav* and her cargo.

Case No. XIX.

Decision.

Petitioner—Russian Volunteer Fleet Company, St. Petersburg, Russia.

Representative—Peeln Foliff (?), Chairman of the Board of Managers.

Advocate—R. Masujima, Counsellor at Law, No. 14, Yamashita Cho, Yokohama.

A protest has been filed by R. Masujima, advocate of the petitioner Peeln Foliff, Chairman of the Board of Managers of the Russian

Volunteer Fleet Company, against the decision of the Sasebo Prize Court given on the 26th of the 5th month of the 37th year of Meiji in the case of the steamship *Ekaterinoslav* of the Russian Volunteer Fleet Company and her cargo, captured by the Japanese man-of-war *Saiyen* near Fusan, Korea, on the 6th of the 2nd month of the 37th year of Meiji. The original decision condemned the ship and her cargo, consisting of 22 rifles, 5 pistols, 3 boxes of ammunition, 1600 rubles in cash, 31 pieces of furniture, 4 articles of clothing and bedding, 1 musical instrument, 1 article to be used in a factory, 1 piece of fur, 1 smith's tool and 2 other articles, 1 cabinet, 2 pieces of silk fabrics, copper cases and other articles, in all 155, and 1 article of clothing. The protest has been tried before this Court, the Public Procurators, K. Tsuzuki and B. Ishiwatari, taking part.

The purport of the protest of R. Masujima, petitioner's advocate, is as follows:

I. The declaration of the Powers and the resolutions of scholars constitute the rules and usage of International Law now in force; and the Rules of Capture at Sea resolved upon by the Institute of International Law at Turin in 1882, the proposals of the International Peace Conference of 1887, and the amendments resolved upon by the Institute of International Law at Paris in 1885 ought to be taken as the standard of such rules and usages, for International Law is not a statute law and has no legislator. Its sanction and the power to amend it rest in the declaration of the Powers and the resolutions of scholars. When a state makes a declaration with regard to a certain event, that becomes a rule of International Law; and such declarations change with the progress of the world and the change of the times. There is no fixed International Law for a state to observe, but any just and impartial practice adopted by it according to circumstances becomes the standard of International Law. In applying the rules of International Law at the time of war, therefore, a state should take into consideration the spirit of the times and the most advanced theories of scholars, basing all its decisions upon the great principle of universal benevolence. Unlike a court of law, a prize court is not bound by any rules. It should, therefore, take as its standard the most advanced principles of International Law and should give decisions at its discretion on the cases brought before it. It is now the beginning of the twentieth century, and the petitioner has the right, the advocate believes, to demand a decision based upon the most advanced principles of International Law. Thus the petitioner bases his plea not only upon the theories expounded by occidental scholars, but also upon new arguments, and insists that even enemy vessels and enemy goods should, according to the standard

above mentioned, be exempt from capture, provided that they are not contraband of war, nor guilty of any illegal act or intention, nor immediately requisite for hostile operations, nor a hindrance to such operations. According to the modern idea of International Law, a belligerent visits and searches enemy vessels in order to safeguard his own interests, and captures are made only when required to attain the object. They are not retaliatory acts. Thus even the enemy war vessels or enemy goods may not be captured except under certain circumstances. As to the idea of vanquishing the enemy by destroying his shipping and commerce, it is not tenable in the present century when communication, transportation, and financial organs are so highly developed. A captured enemy vessel should, therefore, be instantly released unless she has committed some illegal act. The ship under consideration was not guilty of carrying contraband nor of any other illegal act; nor is there any reason to suspect her of any intention to commit such acts in the future. She was only engaged in peaceful commerce, with no intention of assisting hostile operations. She should, therefore, be released. Moreover, Japan went to war for the cause of justice, and no one doubts that she will uphold it to the end. Thus the real ideal of the Imperial Government must be the liberal treatment of even the enemy's vessels and enemy goods, considering them the same as neutral vessels and neutral goods so long as there is no guilty act or intention. Again, this war is the best opportunity to put into practice those enlightened principles of International Law that have been advanced in the last few decades, and when necessary, to establish new precedents. The reason the advocate considers the petitioner's plea to be well grounded, lies in the fact that International Law has been making gradual progress, that many restrictions have been made concerning the right of capture, and that such exceptions tend to become general rules. If it be asked what is the best standard to adopt for the case under consideration, nothing could be better than the above-mentioned Rules of Capture at Sea resolved upon by the Institute of International Law at Turin. Arts. IV., V., VI., VIII. to X., XV., XXIII., XXXII., etc., of the same rules are especially applicable to this case; and the advocate believes that this Empire will not hesitate to adopt them, as they are the public opinion of the world.

II. According to the advanced principle of International Law, the private property of the enemy's subjects shall not be confiscated before the declaration of war, or if the owner is ignorant of the existence of war, even though hostilities have begun. The proposition that a declaration is not required before commencing hostilities applies to the belligerent states, for war is a relation between states,

and the people that constitute the state, as individuals, have nothing to do with it. Consequently their persons and property must be protected notwithstanding the war. Moreover, since Korea was a neutral country, the capture of this ship in the territorial waters of Korea was unlawful. The violation or intention of violating the rules of war determines, under International Law, whether a vessel is confiscable or not. Moreover the Ordinance No. XX. of the 37th year of Meiji gives protection to vessels unacquainted with the opening of war; this ordinance is applicable to the ship under consideration.

III. Suppose the ship and goods under consideration are the enemy's property. They were captured on the 6th of the 2nd month of the 37th year of Meiji, and Japan opened hostilities against Russia on the 8th of the 2nd month, that is, on the day of the naval engagement outside the harbor of Chemulpo. This ship left Vladivostock on the 4th of the same month at 12.45 p.m., and until her capture she did not call at any place. Thus she was ignorant of the breach of peace between Japan and Russia. Moreover, the ship is a merchantman engaged in maritime commerce. She was never equipped for warlike purposes or employed for carrying contraband. She was engaged in peaceful commerce, with no trace of having committed offence. According to modern International Law, therefore, the ship and cargo are not confiscable, even though they may not be exempt from capture. Especially the 3 pieces of furniture belonging to Mrs. Condravitch, as stated in the petition and supplement to the petition, are all for a peaceful purpose, and none of them contraband of war, they should, therefore, be released. The original decision is unlawful in condemning the ship and cargo as good prize notwithstanding the above reasons; and the advocate requests that it be overruled and a new decision be given releasing the ship and cargo.

The gist of the answer of S. Yamamoto, Public Procurator of the Sasebo Prize Court, is as follows:

The protest is very long and contains many arguments which have no direct bearing upon the case. The gist of it is that the most advanced standard of modern International Law is the Rules of Capture at Sea resolved upon by the Institute of International Law at Turin in 1882; that the advocate requests the Court to establish new precedents by adopting the above-mentioned rules, or principles even more advanced; and that the original judgment, which is contrary to the above-mentioned rules, was unlawful. But International Law is the usage recognised generally and observed reciprocally by the Powers. Rules that are nothing more than resolutions of scholars unrecognised by the Powers cannot at once be adopted. As to the other grounds of the protest they were discussed in detail in the

opinion of the Public Procurator in charge; and as nothing new has been produced, the Procurator thinks they require no answer. Thus the original decision is lawful and has no flaw; therefore he thinks that the protest ought to be rejected.

After due consideration the Court concludes as follows:

I. The Rules of Capture at Sea resolved upon by the Institute of International Law at Turin, which the advocate quotes, are nothing more than the desire of scholars, open to further discussion by the Powers. Under International Law they have no authority, and it is a mistake to try to judge cases of capture by them. A prize court has to decide cases brought before it by the law and orders of the country and by International Law, in which respect it differs somewhat from a law court. But both are the same in this, that they must act according to the laws and orders. As to the advocate's vague argument for governing the solid business of the day by the principle of universal benevolence, it is inadmissible. It ignores the fact that war is indispensable in the present state of national intercourse, and tries to deny the right of capture at sea, which is one of the rights under International Law enjoyed by belligerent states. In time of war enemy vessels and enemy goods on board are liable to capture irrespective of the acts or intentions of the owner or the crew. This is the rule of International Law and it is fair. The original decision which applies to this rule, is, therefore, just.

II. During the Russo-Japanese War, not only did Korea consent to the landing and passage of the Japanese army in her territory, but at the beginning, battles were fought there. It follows from these facts that Korea cannot be considered as a neutral in the common sense. The advocate's protest that the capture was in neutral waters and consequently unlawful, is, therefore, radically wrong. As to the Imperial Ordinance No. XX., it grants special immunities to enemy vessels only under certain circumstances, and its application cannot, of course, be extended beyond the scope prescribed. The ship under consideration was captured on the Korean seas on her way from Vladivostock to Odessa, and therefore is not entitled to enjoy the benefit of the ordinance. The liability of capture of enemy vessels, whether they are aware of the opening of war or not, is a generally accepted principle of International Law, so that the ignorance of this ship of the outbreak of hostilities between Japan and Russia is no reason to exempt her from capture. As to the principle of the inviolability of private property, it is generally recognised in modern International Law not to apply to capture at sea. Thus none of the advocate's arguments in No. II. has any foundation.

III. The state of war does not necessarily begin at the moment

when the two opposing armed forces open fire upon each other, but rather when the intention of making war is made public; that is to say, when the intention is carried into action, or when a declaration of war or any such notification is made. When diplomatic negotiations were going on between Japan and Russia concerning the independence and territorial integrity of China and Korea, the Russian unreasonableness put an amicable settlement beyond hope. And when it became very clear that Russia intended to force Japan to submission by force of arms, the Japanese Government ordered its diplomatic agent at St. Petersburg on the 5th of the 2nd month of the 37th year of Meiji to notify the Russian Government that diplomatic relations between the two countries were at an end. At the same time the Imperial fleet made preparations for war and left Sasebo the next day, the 6th, at 7 a.m., with the object of opening hostilities. On the day the fleet captured the ship under consideration, which was liable to naval service in time of war. This (*i. e.*, the sailing of the fleet) was nothing more than putting the intention into action, and the Russo-Japanese War must be said to have been opened from that moment. Thus the state of war existed on the 6th of the 2nd month of the 37th year of Meiji, that is, the day on which the Japanese man-of-war *Saiyen* captured the ship under consideration. If so, not only was the capture lawful, but the ship with her cargo is a lawful prize, as has been explained above. The original decision condemning them is proper. The decision of this Court is therefore as follows:

This protest is hereby rejected.

Given this 30th day of the 5th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case IV. *The Juriady.*

Decision published in the *Official Gazette*, on June 24, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the case of the Russian steamer *Juriady* on the 26th of the 5th month of the 37th year of Meiji.

Petition No. I.

Decision.

Petitioner—Ginsburg, Russian subject.

Advocate—S. Sawada, Counsellor at Law, 79, Yamashita-cho, Yokohama.

In the case of the capture of the Russian steamship *Juriady*, the following decision has been given:

Text of the Decision.

The steamer *Juriady* is hereby confiscated.

Facts and the Grounds of the Decision.

The steamer under consideration is the property of a Russian subject Ginsburg, flying the Russian merchant flag, and was used as a launch at Nagasaki. The owner Ginsburg is a contractor for the Russian army and navy, having branch offices at various places in the East. In the 12th month of the 36th year of Meiji, when he saw that war might break out between Japan and Russia at any moment, he withdrew from Nagasaki, going to Dalny. Since that time the vessel was in charge of Dow, a British subject and manager of Ginsburg & Co. at Nagasaki, and was captured in the port of Nagasaki by the Imperial man-of-war *Katsuragi* on the 17th of the 2nd month of the 37th of Meiji, at 11 a.m.

The above facts are clear from the statement of S. Sakamoto, Captain of the *Katsuragi*; the account and certificate of capture produced by Sub-Lieutenant M. Yoshii, representing the Captain of the *Katsuragi*; "the (A) class certificate of examination of vessels"; the answer of the Police Inspector, M. Yeguchi, Chief of the Umegasaki Police Station, Nagasaki Ken; and the testimonies given by K. Uotani, former master of the vessel, and by Sub-Lieutenant M. Yoshii.

The gist of the petitioner's advocate's plea is (1) that the vessel was used by Ginsburg & Co. to communicate with vessels, Japanese or foreign, with which the company had dealings, or to embark or disembark passengers, and she was not an ocean-going vessel; (2) that the vessel had never been laden with contraband of war, nor ever been guilty of any hostile act against Japan. Therefore, he requests the release of the vessel.

The gist of the opinion of the Public Procurator is that there is no ground for the reasoning of the petitioner, and that, therefore, the vessel should be condemned as lawful prize.

After giving due consideration to the case, the Court concludes that the owner of the vessel is a Russian subject and had a residence in the Empire for carrying on his business. But as he withdrew from the Empire, for Dalny, in the 12th month of the 36th year of Meiji, foreseeing the outbreak of war between Japan and Russia, he is an enemy person in International Law, and a vessel owned by him is the enemy's property. Especially as the vessel flew the Russian merchant flag, she is an enemy vessel from this point also. And as an enemy vessel may be lawfully captured in time of war at any

place except within neutral waters, whether such vessel is a harbor vessel or ocean-going, whether she carries contraband of war or not, or whether she is guilty of a hostile act or not, the capture of the vessel under consideration, after the commencement of the state of war between Japan and Russia is lawful, and she is confiscable. Therefore, the decision as stated in the text has been given.

Given at the Sasebo Prize Court this 26th day of the 5th month of the 37th year of Meiji, in the presence of S. Yamamoto, Public Procurator of the Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case V. *The Kotic.*

Published in the *Official Gazette*, on July 6, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 18th of the 5th month of the 37th year of Meiji, by the Yokosuka Prize Court in the case of the Russian steamer *Kotic*.

No. III.

Decision.

In the case of the Russian steamer *Kotic*, which was captured at Yokohama by the Japanese man-of-war *Amaki* on the 10th of the 2nd month of the 37th year of Meiji, a trial has been held and the following decision given:

Text of the Decision.

The steamer *Kotic* is hereby confiscated.

Facts and the Ground for the Decision.

The steamer *Kotic* is the property of the Kamtchatka Commercial and Industrial Company, St. Petersburg, Russia, which engages in hunting and fishing in Kamtchatka, Russia. She is registered at Vladivostock, and has a license to fly the Russian flag, and also is employed by the company to transport fish, supplies, and fishermen. It is also customary for her to act for the Russian Government authorities and to keep watch over vessels engaging in illegal fishing. The vessel had been staying at Yokohama since the 25th of the 12th month of the 36th year of Meiji, and when war broke out between Japan and Russia she was captured in the same port by the Japanese man-of-war *Amaki*, on the 10th of the 2nd month of the 37th year of Meiji.

The above facts are clear from testimony given by Lieutenant Y.

Kamakura, I.J.N., representative of the Captain of the *Amaki;* Commander Y. Minami, I.J.N., formerly Captain of the *Amaki*; H. Yuasa, Chief of the Yokohama Water Police Station; first mate Ufmann, representative of the master of the *Kotic*; S. Moji, engineer of the *Kotic*; T. Kawakami, second secretary of legation; G. Kuraoka and S. Fukai, tide-waiters of the Custom House; S. Shimidzu and T. Saito, from the statement submitted by Commander Y. Minami, and the ship's papers, and the statement produced by the above-mentioned representative of the master of the steamer, the copy of the decision of the Vladivostock District Court given in the case of the sailing vessel *Kiyomasa Maru*, etc.

The purport of the plea of the petition for the Kamtchatka Commercial and Industrial Company is as follows:

The *Kotic* is a vessel employed for commercial purposes, and in the eye of the law she is a merchantman. She had the liberty, therefore, to leave the port not later than the 16th of the 2nd month of the same year. Notwithstanding this, she was captured before the days of grace had expired. The capture was, therefore, unlawful. In order to decide whether the capture was lawful or not, it is necessary to decide, first, whether she is a Russian merchantman or a Government vessel, and, if she was not a Government vessel, then, whether she was intrusted by the Government with the exercise of police authority or not. Now, in order to constitute a Government vessel, two things are necessary. First, that the vessel be under the immediate control of the Government; that is, that there be a superintending officer on board. Secondly, that she is employed for purposes of the state, that is, for the exercise of Government authority. Were it admitted that the *Kotic* had exercised the police authority of the Russian Government, such exercise was restricted, as is seen from the testimony given by S. Moji, to the time when there was a superintending officer on board. A vessel cannot be said to be a Government vessel when there is no superintending officer on board, even if she were once so employed, for she loses her official character when she ceases to be employed in that capacity. The *Kotic* was captured when she came to Japan, transporting marine products, so that she had not the characteristic of an official vessel. Moreover, the police authority which the vessel is said to have exercised was not exercised by the master, as a deputy of the Russian Government, but she was hired by the Russian officers in order to exercise such authority. In other words, except when she was employed in the exercise of police authority and hired by the Russian Government, she was a merchant vessel employed for the purposes of a mercantile company which owns her. She should, therefore, be released.

The above is the gist of the petition. But the steamer *Kotic* is

a fishing vessel, as stated above, employed for the transportation of fish, etc. Moreover, according to the testimony given by G. Kuraoka and T. Kawakami, the vessel may be considered as having exercised part of the Government's authority, even when there was no official on board. Thus the testimony of S. Moji is not sufficiently strong to destroy the allegation that it was customary for her to exercise a part of the Government's authority. If the vessel has such character she cannot be said to be a merchantman, even if she were captured when she came to Japan transporting marine products and when not exercising any Government authority.

On the above grounds the vessel does not come under the head of merchant vessels entitled to the favour of Imperial Ordinance No. XX. of the 37th year of Meiji, and the action of the Captain of the *Amaki* in capturing her was lawful. She should not, therefore, be released and the decision, as stated in the text, has been given.

Given this 18th day of the 5th month of the 37th year of Meiji, at the Yokosuka Prize Court, the Public Procurator, Y. Kobayashi, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Yokosuka Prize Court.

Case VI. *The Lesnik.*

Decision published in the *Official Gazette*, Tokyo, of July 5, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the Russian sailing vessel *Lesnik* and her cargo on the 18th of the 4th month of the 37th year of Meiji.

Decision.

In the case of the capture of the Russian sailing vessel *Lesnik* and her cargo, the following decision is given according to the last clause of Art. XVI. of the Imperial Prize Court Regulations:

Text of the Decision.

The Russian sailing vessel *Lesnik* and her cargo, consisting of salt, canvas bags, and empty casks, are hereby confiscated.

Facts and the Grounds of the Decision.

The sailing vessel now under consideration and the goods aboard, consisting of salt and two other kinds of articles, were captured in the port of Nagasaki, on the 10th of the 2nd month of the 37th year of

Meiji, by Sub-Lieutenant M. Yoshii according to the order of S. Sakamoto, Captain of the man-of-war *Katsuragi*. At that time the existence of the state of war between Japan and Russia was very clear.

That the *Lesnik* is a Russian vessel is clear from the certificate given by the Russian Consul, then at Nagasaki. That the vessel is a whaler owned by Kaslin (?), otherwise Count Kazelling (?), a Russian subject residing at Vladivostock, and that the salt and two other kinds of articles aboard are the property of the said Kaslin, to be used in the manufacture of salted whale, etc., are further evident from the record of the testimony given by the Chinese subject, Chen-Ming-Chiu, who has charge of the vessel, which proves that the vessel is an enemy vessel and the salt and two other kinds of goods are enemy goods. And as the vessel is an open-sea fishing vessel and not a merchant vessel, she is not entitled to enjoy the benefit of the "exemption of merchantmen from capture," promulgated by the Imperial Ordinance No. XX., under date of the 9th of the 2nd month of the 37th year of Meiji. The capture of the vessel, therefore, is lawful, and the confiscation of the vessel and the goods aboard is proper. Hence, the decision as stated in the text has been given.

In the trial of this case, the Public Procurators, Minakami and S. Yamamoto, took part.

Given this 18th day of the 4th month of the 37th year of Meiji, at Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case VII. *The Manchuria.*[1]

Decision published in the *Official Gazette*, Tokyo, of Feb. 18, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 26th of the 5th month of the 37th year of Meiji by the Sasebo Prize Court in the case of the Russian steamship *Manchuria*.

No. XI.

Decision.

Petitioner—The East China Railroad Company, St. Petersburg, Russia.

Representative—Wentzel, Vice-President.

Advocate—W. Nagashima, Counsellor at Law, 10, Kaga Cho, Kyobashi Ku, Tokyo.

Advocate—N. Hikada, Counsellor at Law.

[1] This vessel was detained at Nagasaki. There was another Russian vessel named the *Manchuria* captured off Port Arthur.

In the case of the Russian steamship *Manchuria*, the decision given is as follows:

Text of the Decision.

The steamship *Manchuria* and certain liquors and provisions belonging to her are hereby confiscated.

Facts and Ground for the Decision.

The steamship *Manchuria* is the property of the East China Railroad Company of Russia, and, on the 17th of the 2nd month of the 37th year of Meiji, while she was under repair at the Mitsubushi Dockyard of Nagasaki, lying at the buoy off the dockyard, she was captured by the Japanese man-of-war *Katsuragi*. The liquors and provisions were found on board at the time of capture.

The above facts are clear from the statement submitted by Lieutenant H. Yokoo, I. J. N., representative of the captain of the man-of-war *Katsuragi*; from the testimony given by the same officer and by the caretaker of the *Manchuria*, Walker, an Englishman; from the certificate of nationality given by the Russian Consul then residing at Nagasaki; from the copy of the order for repairs; the statement of the advocate, etc.

The gist of the plea of the petitioner's advocate is that under International Law, an enemy's merchant vessel can be captured by the belligerent only in his territorial waters or those of the allied Power, or on the high seas. The steamship *Manchuria* was in the dock of the Mitsubishi Dockyard at the time of her capture, and consequently the capture was not lawful. Even if it was conceded that she was not then in the dock, she ought not to be captured, as she was still in the hands of Japanese subjects. Moreover, Imperial Ordinance No. XX., of the 37th year of Meiji, which permitted Russian merchant vessels lying in the territorial waters of Japan at the time of the ordinance's taking effect to depart not later than the 16th of the 2nd month the same year, was meant for vessels that had power of navigation; and any vessels, such as the ship now under consideration, which had no crew at the time of the promulgation of the ordinance, her hull itself being under repair, and which was utterly destitute of the power of navigation, should not be captured merely because the days of grace had expired. The petitioner, therefore, requests that the ship and the liquors and provisions may be released.

The gist of the opinion of the Public Procurator is that the petition now under consideration has no ground, and that the ship and liquors and provisions should be confiscated.

After due consideration, the Court concludes that although the advocate argues that the ship was captured in the dock, the fact men-

tioned above clearly proves that such was not the case. The advocate again argues that at the time the ship was in the possession of Japanese subjects, so that she was not liable to capture. But the question who had possession of a vessel when she was captured, has nothing to do with the validity of the capture. The advocate argues furthermore that the ship had no power of navigation and therefore she ought not be captured merely on the ground that the days of grace had expired. But the right of capture of enemy vessels is a general principle of International Law, and (the) Ordinance No. XX., of the 37th year of Meiji, is an exceptional rule. The capture of any vessel that does not fulfil the conditions sets forth in the ordinance, is, therefore, lawful, whether she has power of navigation or not. In a word, the steamship *Manchuria* was (the) enemy's vessel, the place, date, and procedure of her capture were all proper, and the Court does not see any reason to release her. The liquors and provisions belong to the ship and must be considered as the property of the owner of the ship. So that these too are forfeitable. Therefore, the decision as mentioned in the text has been given.

Given this 26th day of the 5th month of the 37th year of Meiji, at the Sasebo Prize Court, in the presence of the Public Procurator, Y. Hayashi.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Appeal was carried to the Higher Prize Court, but rejected for the same reasons held by the Sasebo Prize Court.

Case VIII. *The Mukden.*

Decision published in the *Official Gazette*, Tokyo, of July 15, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 26th of the 5th month of the 37th year of Meiji, by the Sasebo Prize Court in the case of the Russian steamship *Mukden* and her cargo.

Decision.

Petition No. XIV.

Petitioner—The Eastern Chinese Railway Company.

Representative—Wentzel, Vice President.

Advocate—W. Nagashima, Counsellor at Law, 10, Kagacho, Kyobashi Ku, Tokyo.

Advocate—N. Hidaka, Counsellor at Law, 10, Kagacho, Kyobashi Ku, Tokyo.

In the case of the Russian steamship *Mukden* and her cargo, the following decision has been given:

Text of the Decision.

The Russian steamship *Mukden* and the goods No. 1 to No. 45,[1] No. 47 to No. 52, and No. 54 to No. 56, as mentioned in the annexed list, are hereby confiscated; and the goods No. 46 and No. 53 are released.[2]

Facts and the Grounds of the Decision.

The steamship *Mukden* is the property of the Eastern Chinese Railway Company of Russia, with her home port at Dalny, China, in the district leased to Russia. She flies the Russian flag and is engaged in the transportation of passengers, goods, and mail between Shanghai, China, Fusan, Korea, Nagasaki, Japan, and Vladivostock, Russia. On the 5th of the 2nd month of the 37th year of Meiji, she left Nagasaki for Vladivostock, and on the way she called at Fusan where she was captured by the Japanese man-of-war *Heiyen* on the 6th of the same month at 2.45 p.m. The goods on board, as mentioned in the annexed list, are all deliverable to residents of Vladivostock, one box of paper for record books and one bundle of flags being destined to the French Commercial Agent at the same port.

The above facts are acknowledged by the petitioner's advocates and are further clear from the statement submitted by Lieutenant N. Yoshimura, I. J. N., representative of the captain of the *Heiyen*; from the testimony given by Serge Wisnyofski (?) and Alexander Ivanovitch Kanack (?), 1st and 2nd mates of the *Mukden*; from the log-book, freight list, clearance from Nagasaki, certificate of the Nagasaki Quarantine Office; the statement of G. Gouderau, French Acting Vice Consul at Nagasaki, mentioned in the record of the oral trials in connection with the petitions Nos. VI. and XII.

The purport of the plea of the petitioner's advocates is as follows:

(1) The opening of the Russo-Japanese War was on the 8th of the 2nd month of the 37th year of Meiji, when the naval engagement of Port Arthur was fought, and not at the time when the Japanese Government notified the Russian Government of the breach of all diplomatic relations. The capture of the ship under consideration took place, therefore, before the existence of the state of war between the two countries, and consequently she should be released.

(2) Were it admitted that the state of war commenced with the notification of the breach of diplomatic relations, even then the capture was made before the existence of the state of war, and the ship

[1] Those confiscated are money, boxes of typewriters, dried fruit, zinc plates, etc.

[2] Those released are No. 46, paper for books, and No. 53, one bundle of flags.

should be released; because Minister Kurino delivered the notification to the Russian Foreign Minister on the 6th of the 2nd month of the 37th year of Meiji, at 4 p.m., and the capture took place on the same day at 2.45 p.m. (omitting difference of longitude).

(3) Under the Declaration of Paris of 1856, neutral goods are not liable to capture. The goods mentioned in the advertisement of the *Official Gazette* under the To-A Kwaisha (the East Asia Company), are the property of Marceron Schreter, residing at Vladivostock, so that they should be released.

(4) If the ship should be released, the cargo should also be released.

(5) The capture was made in the territorial waters of Korea; and whether Korea is to be considered neutral or not, requires a special explanation.

Moreover, the people of the enemy's state are apprised of the opening of war by a declaration, and the ship under consideration, which was captured before the declaration, should be released.

Furthermore, Imperial Ordinance No. XX. of the 37th year of Meiji is applicable to vessels at sea, having left a Japanese port before the commencement of the war, and the ship should be released in accordance with the ordinance.

The gist of the opinion of the Public Procurator is as follows:

One box of paper for record books (official paper) and one box of flags, belonging to the French Commercial Agent, should be released, but the ship and all the other cargo should be confiscated, as there is no ground to the petitioner's plea.

After due consideration, the Court concludes as follows:

When diplomatic negotiations concerning the Manchurian and Korean questions were going on between Japan and Russia, the latter country unnecessarily delayed to give an answer to Japan. On the other hand, she showed great activity in her army and navy, sent her land forces to Manchuria and Korea, collected her war vessels at Port Arthur, and thus showed her determination to fight Japan. This was a conspicuous fact. Whereupon, Japan, on the 5th of the 2nd month of the 37th year of Meiji, despatched a notification to Russia, that all diplomatic relations were at an end. At the same time she made preparations for action, and the next day, the 6th, at 7 a.m., her fleet left Sasebo with the object of attacking the Russian fleet. Judging from the conduct of the navies of both countries and from the state of things at that time, hostile operations were publicly opened prior to the capture of the ship under consideration. And as it is thus clear that the state of war had begun before the time of the ship's capture, there is no need to discuss whether it was made be-

fore or after the declaration of war. As to Imperial Ordinance No. XX. of the 37th year of Meiji, it is a special provision exempting from capture Russian merchant vessels that were in Japanese ports on the 9th of the 2nd month or had left foreign ports for Japan before that date; and consequently it cannot be applied to a Russian ship that had left a Japanese port before that date and was on her way to the enemy's country. Concerning Korea, it is clear that she is not *de facto* neutral, and consequently any capture made in her territorial waters cannot be said to be unlawful. Thus the capture under consideration was lawful, and the ship is confiscable. As to the cargo, 1 box of paper (official paper) and 1 box of flags belonging to the French Commercial Agent at Vladivostock, who resides in the Russian territory in order to carry out the orders of his country, should be released. The other parts of the cargo, being all enemy goods in an enemy vessel, are liable to confiscation. The petitioner's advocates plead that the goods mentioned in the advertisement in the *Official Gazette* under the East Asia Company are not the enemy goods, being the property of the Marceron Schreter Company, a French firm at Vladivostock, and consequently neutral. But the national character of goods is determined by the residence of the owner, not by his nationality. The Marceron Schreter Company may be of French nationality, but since it has its office at Vladivostock, Russia, and carries on business there, its property is the enemy's property and is liable to confiscation. The decision as mentioned in the text has, therefore, been given.

Given this 26th day of the 5th month of the 37th year of Meiji, at the Sasebo Prize Court, the Public Procurator, C. Mina Kamu, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on July 15, 1905.

The following decision was given on the 3rd of the 7th month of the 38th year of Meiji, by the Higher Prize Court, in the case of the Russian steamship *Mukden* and cargo.

Case No. IV.

Decision.

Petitioner—The Eastern Chinese Railway Co., St. Petersburg, Russia.

Representative—Wentzel (?), Vice President.

Advocate—W. Nagashima, Counsellor at Law, 10, Kagacho, Kyobashi Ku, Tokyo.

A protest has been filed by W. Nagashima, advocate of Wentzel, representative of the petitioner, the Eastern Chinese Railway Co., against the decision given by the Sasebo Prize Court, on the 26th of the 5th month of the 37th year of Meiji, in the case of the Russian steamship *Mukden* and her cargo, which were captured by the Japanese man-of-war *Heiyen* in the port of Fusan, Korea, on the 6th of the 2nd month of the 37th year of Meiji. The original Court condemned the ship and the goods Nos. 1 to 45, Nos. 47 to 52, and Nos. 54 to 56, as mentioned in the list, and released the goods No. 46 and No. 53. The protest has been tried before this Court, the Public Procurators, K. Tsuzuki and B. Ishiwatari, taking part.

The purport of the protest filed by the advocate, W. Nagashima, is as follows:

(Here the statement is omitted to avoid repetition of the original decision.)

The decision of this Court is explained as follows: The advocate pleads in No. 1 of the protest, that since Japan and Russia entered the state of war on the 8th of the 2nd month of the 37th year of Meiji, that is, when the naval action of Port Arthur was fought, this capture, made before that time, was unlawful. In No. 2, he further pleads, that the capture of the ship under consideration was made prior to the time when Minister Kurino delivered to the Russian Foreign Minister the notice of the breach of diplomatic relations, and consequently she should be released. But the state of war does not commence necessarily at the moment when opposing armed forces open fire upon each other, or when a declaration of war or any such notice is given, but rather when the intention of going to war is carried into effect or when such intention is publicly announced. When, because of Russia's unreasonable behaviour, an amicable settlement of the diplomatic negotiations between Japan and Russia became utterly hopeless, and when it became certain that Russia's intention was to make warlike preparations and to compel Japan to submission, by force of arms, our government, on the 5th of the 2nd month of the 37th year of Meiji, despatched instructions to the Japanese Minister, accredited to Russia, to notify that state that diplomatic relations with her were at an end. At the same time, the Imperial fleet made preparation for war and left Sasebo next day, the 5th at 7 a.m., with the intention of opening hosilities. On the way, the Japanese fleet captured the steamship *Ekaterinoslav* of the Russian Volunteer Fleet Company, which was a vessel liable to naval service in time of war. This was nothing more than the carrying out of the hostile intention, and any capture made after that time is lawful. Moreover, the ship was captured after the Imperial Government, on the 6th of the 2nd

month at 2 p.m., had notified the Russian Minister at Tokyo of the breach of diplomatic relations. Thus the first and second points of the protest have no ground.

In No. 3 and No. 4 of the protest, the advocate argues that the goods mentioned in the advertisement of the *Official Gazette* under the Eastern Asia Company, and the goods No. 31, are the property of the consignor, and ought, therefore, be released. But goods shipped by a person living outside the enemy's territory, in an enemy's vessel and consigned to a person residing in the enemy's territory, are the enemy's property, and are confiscable. This is a rule recognised in international usage, and this Court considers it fair and reasonable. And as this rule is applicable to such goods, no matter under what circumstances they may have been shipped in an enemy vessel, the third and fourth points of the protest are inadmissible.

The fifth point of the protest cannot be a reason for the release of the cargo, unless it is proved that the ship ought to be released.

In No. 6 of the protest, the advocate regrets that the Sasebo Prize Court has not definitely ascertained the position of Korea in International Law. But since Korea was not an ordinary neutral, a capture made in her waters cannot be said to be unlawful. Therefore, the decision of the Sasebo Court, which stated that Korea was not *de facto* neutral, is not defective, although it does not give any further explanation of the position of Korea.

In No. 7 of the protest the advocate argues that the capture was unlawful, as it was made before the declaration of war. But when hostilities are once opened, a belligerent can exercise the right of capture, no matter whether the enemy's subjects are apprised of the fact or not. This is recognised in International Law, and consequently, No. 7 of the protest has no ground.

In No. 8 of the protest, the advocate maintains that the ship ought to be released in accordance with Imperial Ordinance No. XX. of the 37th year of Meiji. But the ship under consideration does not come under the ordinance, since she left Nagasaki on the 5th of the 2nd month of the 37th year of Meiji, and was captured when she called at Fusan. Moreover, the ordinance gives the favour of exemption from capture only to peaceful private vessels and is not applicable to a ship that must be considered as the property of the enemy's government. The Eastern Chinese Railway Company is ostensibly a private corporation, but according to the statistics of the vessels in Russian dominions in Asia, published by the Russian Department of Communications, all the vessels of the same company are included in the list of government vessels. Moreover, in the North China Affairs of the 33rd year of Meiji, the Russian Government demanded indemnity from

China for the damages received by the same company as damages sustained by the state. Thus the Russian Government, itself, acknowledges that the Eastern Chinese Railway Company is an organ of the state. The object of the establishment of the company, its organisation, etc., furnish also sufficient evidence to prove that the company is not a private corporation. The ship under consideration must, therefore, be considered as government property, and is not entitled to enjoy the benefit of Imperial Ordinance No. XX.

Regarding No. 9 of the protest, the circumstances under which the enemy's goods were shipped in an enemy's vessel, have no effect upon a belligerent's right of capture, as is explained in connection with No. 3 of the protest. Thus No. 9 too is without foundation.

The decision of this Court is, therefore, as follows:

This protest is hereby rejected.

Given this 3rd day of the 7th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case IX. *The Nadajda.*

Published in the *Official Gazette*, Tokyo.

Decision of the Yokosuka Prize Court.

The following decision has been given by the Yokosuka Prize Court on the sailing vessel *Nadajda*, 12, 5th month of the 37th year of Meiji.

Decision.

In the case of the sailing vessel *Nadajda*, captured by the Imperial man-of-war *Takao*, at Hakodate on the 17th of the 2nd month of the 37th year of Meiji, the following decision is given after due examination.

Text of the Decision.

The sailing vessel *Nadajda* is hereby declared a lawful prize.

Facts and the Grounds of the Decision.

The sailing vessel *Nadajda* is the property of Ephigehe Josephovitch Nicolske, a Russian subject, and is a merchantman principally employed for transportation of goods. The vessel is registered at Vladivostock, Russian Empire, and has permission to fly the merchant flag of the Russian Empire and a license to voyage the sea for commerce or transportation of goods. The vessel entered the port of Hakodate on the 28th day of the 11th month of the 36th year of Meiji and had been staying there since, when on the 6th of the 2nd month of the 37th year of Meiji, the state of war began between Japan and Russia.

On the 9th of the same month, an Imperial Ordinance was promulgated concerning exemption of Russian merchantmen from capture.

The captain of the Imperial man-of-war *Takao* then ordered the sailing vessel under consideration to leave Japanese waters within the period during which Russian merchantmen were exempt from capture, that is to say, on or before the 16th of the 2nd month of the 37th year of Meiji. The vessel, however, remained in port even after the lapse of this period of grace, and therefore the captain of the Imperial man-of-war *Takao* sent Joji Tajima, an officer of the man-of-war, to the sailing vessel to capture her according to the Regulations Governing Captures at Sea of the Empire of Japan.

The above facts are from the statement of the captain of the Imperial man-of-war *Takao*, the report of Joji Tajima, officer of the same man-of-war, the license of navigation, the testimonies given by the said Joji Tajima and by Iwangaritch, representative of the master of the sailing vessel *Nadajda*, etc.

That in time of war a belligerent has the right to capture the enemy's merchantmen, except when he voluntarily exempts them, is recognised both in the Japanese Regulations Governing Captures at Sea, and in the precedents and theory of *International Law*. The vessel under consideration did not leave the port within the period of grace prescribed in the Imperial Ordinance concerning exemption of Russian merchantmen from capture, and consequently she is liable to capture. And therefore the decision is given as stated in the text.

Given this 12th day of the 5th month of the 37th year of Meiji, at the Yokosuka Prize Court, after hearing the opinion of K. Yanagita, Public Procurator of the Yokosuka Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Case X. *The Thalia.*

Published in the *Official Gazette*, Tokyo, on May 5, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 8th of the 8th month of the 37th year of Meiji, by the Yokosuka Prize Court, in the case of the Russian steamer *Thalia*.

Decision.

No. IV.

In the case of the steamer *Thalia*, captured at Hakodate by the Japanese man-of-war *Takao* on the 13th of the 4th month of the 37th year of Meiji, trial has been held and the following given:

Text of the Decision.

The steamer *Thalia* is hereby confiscated.

Facts and the Grounds of the Decision.

The steamer *Thalia* is the property of the Kamtchatka Commercial and Industrial Company, of St. Petersburg, Russia, and is a seagoing vessel. The vessel was undergoing repairs at the Hakodate Dockyard Company by the order of Baron N. Blaggen (?), manager of the Kamtchatka Commercial and Industrial Company, being hauled up by the side of the patent slip (*on land*) in the grounds of the Dockyard Company, when she was captured by Lieutenant J. Tajima, of the Japanese man-of-war *Takao*, under orders of the captain.

The above facts are clear from the report submitted by Lieutenant J. Tajima concerning the capture, the reply of S. Sonoda, active manager of the Hakodate Dockyard Company, addressed to Captain Y. Yashiro of the *Takao*, the letter of J. A. Wilson, proprietor of Howell & Co., of Hakodate, and the report of the Councillor in charge of the case.

The purport of the petition of Alexis Brozoloff (?) and Enmore Mandel (?), representatives of the Kamtchatka Commercial and Industrial Company, is as follows:

The ship is the property of the Kamtchatka Commercial and Industrial Company, and was captured while she was undergoing repairs, *on land*, in the compound of the Hakodate Dockyard Company. According to the works of Hall, Carvot, and other scholars, the places where maritime captures can be made are the high seas and the territorial waters of the belligerents; and any goods lying outside of such limits are inviolable. This principle seems to have been adopted in the Japanese Rules Governing Captures at Sea. Now, the limits of territorial waters are measured from the shore a certain definite distance seaward. Thus territorial waters never extend over other than sea surface, and consequently it is impossible that land within a dockyard should lie within such area. And admitting that captures may be made on rivers and lakes, which are not included in territorial waters, then there must be steamers and other kinds of vessels, besides those floating on rivers and lakes, that are not governed by the rules of maritime law; because such vessels are recognised in the 2nd clause of Art. LIII. of The Hague Treaty. If so, they must be those vessels, such as the one under consideration, which lie on the land. In other words, vessels such as the one under consideration are outside the jurisdiction of maritime law, as mentioned in the said article. Moreover, property on land or at sea is distinguished not by its nature and use, but by the place where found when captured. And when there is any doubt about this distinc-

tion, it is right to consider such property as property on land, because the gradual tendency of International Law is to adopt the principle of the inviolability of the enemy's private property at sea. Furthermore, the vessel under consideration was damaged to such an extent that she could not move with her own steam, and was brought (to Hakodate) on board the steamship *Progress*. She ought, therefore, to be considered as cargo. In a word, the vessel ought not to be governed by the rules of capture at sea, because the place of capture was on land, and because her character was that of private property on land, and the petitioners request her speedy release.

After due consideration, the Court concludes as follows:

In order to maintain vessels in serviceable condition they must at certain intervals be taken into docks, etc., and repaired or repainted. This is indispensable to modern vessels. Their lying in docks or such places is, therefore, their normal condition. And the argument that vessels hauled on shore for docking or other purposes lose their character of property afloat, as is the case with ordinary goods when they are landed, is inadmissible both from theoretical and practical points of view. Thus in the laws and usage of the Powers, and International Law, no distinction is made between vessels in docks, etc., and those floating in ports, and all the rights and obligations of vessels are held to be the same in both cases. In other words, since, in ordinary times, vessels in docks and others afloat are considered the same, so, as a natural result, they are properly liable to capture as if actually at sea in time of war. Moreover, the capture of such vessels accords with the principles of International Law which authorises captures at sea.

Again, the petitioners cite the 2nd clause of Art. LIII. of The Hague Treaty, and argue that vessels on land are not liable to capture. The words of that clause are: "Steamers, and other ships, apart from cases governed by Maritime Law." Thus that provision excludes vessels governed by Maritime Law, and consequently is not applicable to vessels, such as the one under consideration, which lie at a place considered to be the same as the sea surface and are under the rule of Maritime Law. It is also beyond question that a vessel cannot be considered as cargo, on account of having been carried by another vessel, after she resumes her normal condition as a vessel. Thus the capture cannot be said to have been made at a place beyond the jurisdiction of Maritime Law, even though it was on the land by the side of the patent slip of the Hakodate Dockyard Company, nor can the vessel be considered as property on land.

For the above reasons the capture of the steamer *Thalia* made by the captain of the man-of-war *Takao* was lawful, and the decision, as stated in the text, has been given.

Given this 8th day of the 8th month of the 37th year of Meiji, at the Yokosuka Prize Court, the Public Procurator of the Court Yanagida being present.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on May 17, 1905.

The decision was given on the 9th of the 5th month of the 38th year of Meiji, by the Higher Prize Court, in the case of the Russian steamship *Thalia*.

Decision.

Case No. XXVII.

Petitioner—The Kamtchatka Commercial and Industrial Company, St. Petersburg, Russia.

Representatives—Alexis Brozoloff (?), Enmore Mandel (?).

Advocate—K. Gorai, Counsellor at Law, 4.4 chome, Fujimi Cho, Kojimachi ku, Tokyo.

A protest has been filed by K. Gorai, Counsellor at Law, advocate of Alexis Brozoloff and Enmore Mandel, representatives of the petitioner, the Kamtchatka Commercial and Industrial Company, against the decision of the Yokosuka Prize Court, given on the 8th of the 8th month of the 37th year of Meiji, in the case of the steamer *Thalia*, belonging to the Kamtchatka Commercial and Industrial Company, of St. Petersburg, Russia, captured at Hakodate by the Japanese man-of-war *Takao* on the 13th of the 4th month of the 37th year of Meiji. The decision of the Yokosuka Prize Court condemned the steamer. The trial has been held before this Court, the Public Procurators K. Tsuzuki and B. Ishiwatari taking part.

The purport of the protest of the advocate, K. Gorai, is as follows:

The decision given by the Yokosuka Prize Court, condemning the steamer *Thalia*, is unlawful, and the advocate requests that it be overruled and the vessel be released. As the reason for the protest, the advocate states:

I. In the original decision it is explained that "A vessel lying in a dock or any such place is, therefore, its normal condition. And the argument that vessels hauled on shore for docking or other purposes lose their character of property afloat, as is the case with ordinary goods when they are landed, is inadmissible both from the theoretical and practical points of view." This explanation is based upon the character of the *Thalia* as a vessel and takes no notice of the place where

captures at sea can be made. It is contrary to the principle that captures at sea can be made only in territorial waters or on the high seas, and is unlawful in the following particulars:

(1) It is stated in Art. II. of the Japanese Rules Governing Captures at Sea, "visit, search, or capture shall not be made in neutral waters, nor in waters clearly placed by treaty stipulations outside the zone of hostile operations." That nothing is said of land is because captures may not be made on land, and consequently there is no need of prescribing such an exception. The denial of the right of capture elsewhere than on the water being the spirit of the rule mentioned above, the capture under consideration is in violation of Japanese Law of the Rules Governing Captures at Sea.

(2) In (*g*) of Art. XXIII. and Art. XLVI. of the Hague Treaty, published on the 21st of the 11th month of the 33rd year of Meiji, it is provided that the enemy's private property shall be respected, and that it shall not be seized nor confiscated. Thus the principle of the inviolability of private property is adopted, and as no limitation is made as to kinds of such property, the spirit of that provision is not to except vessels. Moreover, in the 2nd clause of Art. LIII. of the same treaty there occurs a phrase, "steamers and other ships, apart from cases governed by Maritime Law"; so that even vessels, when they lie outside the limits where the right of capture at sea may be exercised, must be governed by this rule. Furthermore, there is in the same clause another phrase, "landed telegraphs," and as this phrase includes that part of a submarine cable that lies on land, so the spirit of the rule is to give protection to marine goods when they lie where the right of capture cannot be enforced. The capture under consideration is, therefore, a violation of the Hague Treaty, to which Japan is a party.

(3) The capture of the *Thalia* on land is against the rules of International Law.

(*a*) In the original decision it is said that vessels lying in docks or such places are vessels still, and do not lose their character of property afloat, nor are they exempt from capture. Now vessels lying in neutral waters, or other places clearly placed by treaty stipulations outside the zone of hostilities, also retain their character of property afloat. But such vessels are not liable to capture, because the places where they lie are inviolable under International Law. This ship, when she was captured, was on land near the dock; and is not private property on land inviolable under International Law? It is very clear, therefore, that the vessel was not liable to capture—just as in territorial waters or other places by treaty outside the zone of hostilities—unless it is proved that land near the docks is also sea surface. The original Court took as criterion the character of vessels as property

afloat, but did not take into consideration the limits within which alone the right of capture can be exercised, and thus gave an unlawful decision.

(*b*) The majority of international jurists agree that captures on land shall not be made. Hall says, "Enemy goods which a belligerent finds within his territory are in fact exempt from confiscation, except those which entered his territorial waters after the commencement of war." Masset says, "Civilised countries respect on land non-combatant people and private property as far as possible, but at sea they revert to the old barbarous state, and capture the vessels and merchandise of the subjects of the enemy's state." Rivier says, "A belligerent has the right to seize the enemy's private property floating on the sea." Boeck says, "The private property of the enemy's state under the enemy's flag may be captured on the high seas and the territorial waters of the belligerents." In Art. VIII. of the Rules of Capture at Sea, resolved upon by the Institute of International Law in 1882, which is a collection of opinions of various countries, captures are restricted to the sea. Thus it is not difficult to understand the trend of opinions of jurists. And if it is the almost undisputed opinion of scholars that the right of capture does not extend to land near docks, then the capture under consideration is unlawful in theory also.

(*c*) In the original decision it is said that the capture of vessels lying near docks, such as the *Thalia*, accords with the principle of International Law which authorises captures at sea. But not only does the capture on land not accord with the principle of capture at sea, but it is contrary to the principle by which private property is differently treated on land and at sea. There are many reasons which necessitate capture at sea, and the chief of them are as follows: (1) Pradier-Fodéré says, "Enemy vessels are captured in the territorial waters of belligerents, because the law of the country cannot be enforced, nor the right of supervision exercised, nor protection given to property afloat as in the case of property on land." If vessels are captured on such grounds, then there is no reason to capture vessels found on land. Because, unlike the sea, the law can be enforced and the right of supervision exercised perfectly and absolutely on land. (2) Hautefeuille, in explaining the inviolability of private property on land and its liability to capture at sea, says: "In order to rob the enemy of the benefits he receives from his public and private property, it is sufficient on land for a belligerent to occupy the enemy's territory; but at sea the only method of injuring the enemy is to confiscate his private property and to rob him of the benefits he receives from such property. If enemy vessels with their cargoes were released and allowed to proceed to their country, the benefits which the enemy would receive

directly or indirectly from them might be very great. On the other hand, if they are seized, the belligerent will enjoy the benefits which his enemy would have enjoyed." According to this principle, the vessel under consideration, if she is required for warlike operations, may be requisitioned as property on land under the 2nd clause of Art. LIII. of The Hague Treaty, as she was on land; and in case any attempt be made to take her away, then she may be captured as private property at sea. If she is kept in Japan as property on land, there is no fear of her giving any benefit to the enemy nor any injury to Japan. (3) Funk Blentano and Sorell say: "The people of the hostile state have their property in a belligerent state, because they rely on the law of the latter in the protection of property right in ordinary times. And as war never changes such national law, such state must respect and protect the enemy's private property also, as long as it continues to give protection to property rights. Otherwise the result will be that the state violates its own law." If the enemy's private property is to be respected according to this argument, then confiscation of the vessel under consideration will be a violation of the spirit of the Japanese law, as she was on land. (4) Rivier, Hautefeuille, and other scholars say: "Unlike goods on land, vessels can be armed and used as men-of-war, or they may be used for important service, as transports, etc. This is the reason why captures at sea are necessary." Even according to this principle it is proper to release this vessel, because if she is required for warlike purposes, she may be requisitioned, under the 2nd clause of Art. LIII. of The Hague Treaty, as a vessel not coming under the rule of Maritime Law. (5) Wheaton, Rivier, and other scholars say: "The object of land warfare is to occupy and take the enemy's territory, and that of maritime war is to destroy his commerce and navigation. This is the reason why the violation of private property is not necessary for the former, but is necessary for the latter." Thus the object of captures at sea is to injure the enemy's commerce and to bring the war to an end; and not to extend the hardship of capture after the close of it. The vessel under consideration is, on one hand, under supervision of the Government, and, on the other, she cannot go home unless by sea. While this ship remains on land, the object of injuring the enemy's commerce is unhindered by her, even if she is held inviolable as a property on land.

(*d*) Extension of maritime captures even to land near docks is contrary to the fundamental principle concerning the agents which make war. The agents which make war are states, and private persons can never be such agents. Rivier says: "Those which have the right of making war are states alone. Therefore, there is no war between private persons nor between a state and private persons." Inter-

national jurists of Europe and America, with the exception of those of Great Britain, agree in this principle, and consequently the inviolability of private property is recognised as a fundamental principle throughout the world. Art. XLVI. of The Hague Convention is an expression of this principle; and as to the usage of maritime capture, it is nothing more than an exception to this general rule. In case there is doubt whether goods are property on land or at sea, being found on land near dock, as is the case with the vessel now under consideration, and doubt whether they are to be released or confiscated, such goods ought to be considered as property on land and released, according to the general rule that an exception shall be taken in the narrow sense. This is a natural result of the fundamental principle that the agents which make war are states alone.

(*e*) In the original decision docks and land near them are considered to be the same as the sea. But such land and water surface of ports are clearly different in their character from the legal point of view, as is explained in the following:

(1) Docks and land near them may be owned by a state or by private persons, but the ownership of the water surface of a port is never allowed to private persons. K. Amani says: "If a piece of land includes part of the water surface of a port, the ownership of the water surface differs from that of the land in this point, that it does not give the owner the absolute right of disposal." The ownership of a dock and land near it is absolute, and the owner has the right of preventing any intruder who attempts to enter them against his will. On the other hand, the ownership of a port does not allow the owner to keep away vessels that enter the port to take shelter from the weather or to escape from dangers. Again, the owner of land is free to permit or refuse another to use his land; but the owner of a port, that is, a state, must allow use of the port equally to foreign countries.

(2) In docks, and land near them, the harmless passage of foreign armed forces is absolutely forbidden, but in the case of the water surface of a port, the state must permit the harmless passage of foreign men-of-war, unless dangerous to the safety of that state.

There being such differences between land and water surface, there is no reason why the right of maritime capture should extend to the neighbourhood of docks, which is purely land. Consequently the capture of the vessel under consideration was unlawful.

(*f*) In the original decision the Court recognised that the place of capture of the vessel was land by the side of the patent slip; but, saying that the place was analogous to a dock, the original Court tried to dispose of the case by reasoning indiscriminately as if the place was the same as the dock. Land by the side of a dock, however, is not a

dock. Such land is not the place where a vessel naturally lies when under repair. Were it admitted that the right of maritime capture extends to such land, then, when a vessel lies at a place 10 "ri" or 100 "ri" from the shore for repair, such place must be considered as within the area where the right of capture can be exercised. Even if it were admitted that a vessel lying in dock is in its natural condition, and must be considered just the same as one floating in a port, a vessel lying on land outside the dock cannot be said to be in its natural condition. The patent slip and the land by its side may be only a step in actual distance, but to the eye of Law such distance is very great. The place where the vessel was captured was on land, and as it was outside the limits within which the right of maritime capture can be exercised, the vessel ought to be released.

II. The original decision, which considered the vessel as being in the natural state of a vessel, mistook the facts:

(1) The vessel was brought on board the steamship *Progress* to Hakodate to be repaired there. The original decision, recognising, on one hand, that the vessel was cargo while she lay on board the *Progress*, explains, on the other, that, "She cannot be considered as cargo . . . after she resumes her normal condition as a vessel." But why cannot goods, which were cargo in spite of being a vessel, be regarded on land as private property, in spite of being a vessel? The vessel was cargo, because she was carried by another vessel for the purpose of repair. She was hauled on shore for the same purpose, and while the same purpose continues, there is no reason that the vessel should change its character. If it is argued that the vessel resumed its normal condition as it was once lowered into water, then would it be property on land in case it were landed direct from the ship? This is an unreasonable argument. The vessel was lowered into the water for a time, just as lumber is lowered into the water to land it, and the process is nothing more than a method of transportation.

(2) At the time of capture the repairs were not completed, and the vessel was not capable of navigation. This is clear from the report of the prize officer. And it is more proper to consider such a vessel, incapable of navigation, as goods rather than a vessel.

(3) At the time of capture the vessel had no instruments of navigation, no flag, no ship's papers, and no crew, and lacked all other conditions essential for a vessel. Thus the vessel must be said to have been in a condition to be treated as goods rather than as a vessel. The vessel is, therefore, private property on land, lying by the side of a dock, and ought to be released under The Hague Treaty.

The gist of the answer of the Public Procurator of the Yokosuka Prize Court, Y. Kobayashi, S. Uchida, and K. Yanagita, to the above

protest is that the capture was lawful, and they see no objection to its condemnation, for the following reasons:

(1) Concerning the place where captures can be made, the majority of the precedents and theoretical opinions limits it negatively, and as yet it has not been defined positively. Lushington and Holland explain that "the right of capture may be exercised in all waters except the territorial waters of neutral States," because they consider that maritime property is not generally found except on the water. They do not mean that in rare occasions, when maritime property is found elsewhere than on the water, it is exempt from capture. Were it admitted that there are positive limits, and, the advocate argues, to the place within which captures may be made, even then the vessel must be said to have been captured within such limits. The Procurators do not know upon what authority the so-called fundamental principle of the advocate is based. But probably the advocate considers as positive limits those enumerated by Phillimore as limits within which visit and search may be made, and by Hall as limits within which captures are commonly made; that is to say, the high seas and territorial waters of belligerents. The word "waters" is the collective name of geographic divisions, such as ports, gulfs, inlets, river mouths, etc., and includes, broadly speaking, what is called in common language the sea. Therefore "waters" are not necessarily always covered with water. Some part of them may be dried for a time by natural phenomena, such as rise and fall of tides, or by human works. If the word "waters" is taken in the sense of water surface, it is a mistake. A dock may be said to form a "water" by itself; or, considering the fact that it always exists in connection with the anchorages of vessels, it may be considered as constituting, together with other parts, a "water," such as a port or river mouth. In either case, captures in dock are always captures in waters. If the advocate means by the word "land," on which, he says, captures are not allowable, all the surface of the earth not covered by water, it is an unauthorised opinion, which even scholars who define positively the area within which captures may be made do not dare to advocate. A vessel while under repair in a dock may be hauled to its side, or the dock may be dried, from the necessity of the work, but such a vessel cannot be said to lie on land on that account.

(2) In Art. VIII. of the Resolution of the Institute of International Law, made at Turin in 1882, cited by the advocate, it is stated that the right of capture may be exercised in waters within 3 miles from the shore of the belligerents and on the open sea.

And the phrase "Water surface" is not used as the advocate says. Consequently there is no such phenomenon that a vessel beached at tide-water loses protection and regains it from time to time, according

to the rise and fall of the tides. The above article was not adopted in the Japanese Rules Governing Captures at Sea, because the positive definition of the limits within which captures may be made has not been generally adopted; and since it concerns grave interests of the country there is no necessity for Japan to impose upon herself restrictions without reciprocity on the part of her enemy.

(3) The advocate says that in Art. II. of the Rules Governing Captures at Sea, only the territorial waters of neutral countries and waters for which there are special stipulations are mentioned as limits within which no capture is allowed, but nothing is said of land, such as neutral territories, which are, of course, to be excluded from the sphere of capture. This proves, he argues, that captures may not be made even in the territories of belligerents. But there is no need for rules governing captures to include all other rules also, and no provision was made for land, because there was no need of it.

(4) The Hague Convention quoted by the advocate is the rules for warfare on land. This is recognised by the advocate himself. Why, then, does he attempt to apply it to a case of capture made by the Imperial Navy? Moreover, does not the phrase "vessels not governed by Maritime Law" imply that land forces also may encounter vessels that are governed by Maritime Law?

(5) In order to confirm his own opinion that no capture may be made outside the water surface, the advocate seems somewhat to strain the opinion of scholars. Hall only recognised that there is a tendency to exempt from capture an enemy's property lying in the territory of a belligerent from a time prior to the opening of war; Masset's opinion is nothing more than a narration of common facts, and he never meant to define clearly the limits of the right; and Rivier used the phrase, "property afloat," in the sense of maritime property, and he never intended to make a distinction between goods actually floating on water and those not so floating.

(6) The advocates cited several opinions of scholars concerning the reason why only maritime property is liable to capture, and tried to show that the capture of the vessel under consideration does not conform with any of them. But the variety of these opinions rather shows that these quotations are not to the point. And whatever these opinions are, there is no reason why the vessel under consideration should be released, when the confiscation of private property at sea is practised as an indispensable act of war.

(7) The advocate argues that it is the general opinion of the present day that war is carried on only between states, and that captures at sea, where private persons are considered as enemies, is an exception. In doubtful cases, therefore, the original principle must be applied.

But at sea, as on land, the object of warfare is to injure the enemy's State; and the people of the belligerent State suffer, unavoidably, losses from the reflex actions of war as well on land as at sea. Private property at sea and on land are differently treated, simply because the rules of warfare at sea and those on land have been differently developed. This is recognised by the greater number of scholars. And if it must be distinguished which is the original principle and which the exception, then, from their historical development, the confiscation of private property must be considered rather as the fundamental principle. And concerning the case under consideration there is no doubt as to whether the steamer *Thalia* is maritime or land property.

(8) The advocate argues that there are differences between the land and water surfaces in public and private laws, but he does not explain in what manner these differences affect the validity or invalidity of captures. Admitting such differences, there is no reason why captures freely made even at sea, where the territorial right is rather weak, should be restricted on land, where such right is stronger. Moreover, there are many cases in which a section of water surface is possessed and used by private persons to the exclusion of others, for instance, water surface adjoining a pier, quay, etc. A dock is another example, and the procurator cannot agree with the advocate in his argument that the presence or absence of water has different effect.

(9) The advocate tries to show the capture of the vessel under consideration unlawful by using a new phrase, "capture on land." But if the meaning of the word "land" is as the advocate understands it, then captures on land are not necessarily unlawful. Captures on land are not commonly made, because cargo, and even vessels, when they are taken from the sea and carried inland, in most cases will change their character from maritime property to goods not liable to capture under International Law. But in the case of a vessel in dock, or of a vessel wilfully hauled on shore by the owner to escape capture, such vessel does not lose its character of maritime property on that account, and consequently is liable to capture. If all captures must be given up within the beach line, under any circumstances, then an insular empire, obliged to attack with its naval forces the enemy's coast, would suffer great disadvantages from such an unlawful restriction. In a word, the capture of the vessel under consideration accords with the spirit of our Rules Governing Captures at Sea, which do not positively define the limits within which captures are authorised; and the decision of the Yokosuka Prize Court which discusses whether the vessel is maritime property or not, but does not take any notice of the place where it was found, is perfectly right.

(10) The advocate argues that the vessel is cargo brought on board

the steamship *Progress* and landed at Hakodate. But in the record of the examination of T. Midsuno, an officer of the Hakodate Dockyard Company, it is stated, "I do not know how the *Thalia* was brought to Hakodate, but when she was brought to the dock she was afloat." And there is evidence that the owner of the steamer's agent at Hakodate treated her as a vessel. Therefore she cannot be considered the same as lumber floating on the water. Were it admitted that there was a time when she was a property on land, she regained her natural character before she was taken into the dock. As to the lack of flags, ship's papers, etc., it does not alter the character of vessel as maritime property. On the other hand, such a lack is in many cases a cause of capture.

The decision of this Court is explained as follows:

I. The advocate says that the original decision stated that a vessel's lying in a dock, etc., being her normal condition, she does not lose her character of property afloat if she lies by chance on land; and the Court, without taking into consideration the place in which captures are authorised, but taking only her character as a vessel as the criterion, condemned the *Thalia*. Therefore, the advocate says, the decision is contrary to the fundamental principle that captures may be made only in territorial waters and on the high seas, and is unlawful in the following particulars:

1. The capture under consideration, says the advocate, is contrary to the Japanese Rules Governing Captures at Sea. But Art. II. of the Japanese Rules Governing Captures at Sea, viz., "No visit, search, or capture shall be made in neutral waters nor in waters clearly placed by treaty stipulations outside the zone of hostile operations," is nothing more than an instruction that Japanese men-of-war shall never make visit, search, or capture in neutral waters nor in waters clearly placed by treaty stipulations outside the zone of hostile operations. And there is no dispute as to the fact that the capture of the vessel under consideration was not made in the territorial waters of a neutral nor in waters clearly placed by treaty stipulations outside the zone of hostile operations, it is not contrary to our Rules Governing Captures at Sea.

2. The capture under consideration, says the advocate, is in violation of The Hague Treaty, promulgated on the 21st of the 11th month of the 37th year of Meiji. But as that treaty is an agreement with respect to the laws and customs of war on land, and not an agreement with respect to rules and usage of maritime war, the protest of the advocate that the capture under consideration is a violation of The Hague Treaty is irrelevant.

3. The capture under consideration, the advocate argues, is in vio-

lation of the rules of International Law, and as the reasons of his agreement, he states:

(*a*) Private property on land is inviolable under International Law, and as the vessel was on land, by the side of a dock, her capture was unlawful.

(*b*) The opinions of the majority of scholars concerning the place where captures are authorised are as follows: Some say captures may be made on the sea; some say in the territorial waters of belligerents and on the high seas; some say that the subject of capture is the enemy's property afloat; and the resolution of the Institute of International Law of 1882 is that captures at sea shall be restricted to water surface. Thus the capture of the vessel under consideration, says the advocate, is contrary to theoretical opinions.

(*c*) The capture of the vessel under consideration does not accord with the principle which authorises captures at sea.

(*d*) As the agents of war are states, the fundamental principle must be the inviolability of private property. The capture at sea of private property is thus an exception; and in case there is doubt whether certain goods are maritime property or property on land, such goods should be considered as property on land, in accordance with the general rule that exceptions shall be taken in the narrowest sense. Therefore, the advocate says, the vessel under consideration ought to be considered property on land, and she comes under the principle of the inviolability of private property.

(*e*) Docks and the land in their neighbourhood are quite different from the sea in their character, and, therefore, says the advocate, captures in them are unlawful.

(*f*) Even if a vessel in a dock and afloat in port are to be considered the same, the capture of the vessel under consideration was unlawful, as it was made on land in the neighbourhood of a dock.

(*a*) Putting a vessel in a dock or on the work-ground of the dock-yard for the necessity of making repairs, is nothing more than a temporary avoidance of water during the work with the object of restoring her to her proper efficiency. In such case it must be said that the right of capture may be enforced upon the vessel, even if the place where she lies is not covered with water. The protest of the advocate that the capture of the vessel under consideration was unlawful, as it was made on land, has, therefore, no ground.

(*b*) The normal condition of a vessel is floating on the surface of the water. Thus, in discussing the places of capture, scholars use phrases, "at sea," "on the high seas and in the territorial waters of neutral countries," "property afloat," etc. Moreover, the resolution of the Institute of International Law at Turin, that the right of capture

shall not be exercised except in the territorial waters of belligerent states and on the open sea, supposes ordinary cases; and a vessel lying in a dock or on the work-ground of a dockyard, as the one under consideration, must be considered, like a vessel temporarily hauled on the beach for preservation or safe keeping, similar to one floating on the water; consequently the capture under consideration was not contrary to the opinion of scholars.

(*c*) The vessel was lying on the work-ground of a dockyard, but as she was an enemy vessel capable of resuming her seagoing ability, her capture was not contrary to the principle of International Law which authorises captures at sea.

(*d*) The subject of the capture under consideration was a vessel lying temporarily on the work-ground of a dockyard for repair. To this fact there is no dispute. There is no room for doubt whether it was property on land or maritime property, and consequently no explanations nor questions, as stated by the advocate, arise.

Concerning (*e*) and (*f*), it is clear from the explanation given in connection with (*a*) that the arguments of the advocate have no ground, and consequently no answer is required.

In II. the advocate argues that the vessel under consideration was brought to Hakodate for repair on board another steamer, and while she remains on land with that object she is cargo landed. Moreover, at the time of capture not only was she in a state incapacitated for voyage, the repairs not having been finished, but she lacked instruments of navigation, crew, etc. Therefore, the advocate says, she ought to be released as goods on land lying in the neighbourhood of a dock. But from the power of attorney of the petitioner, from the testimony given by K. Nakada, tide-waiter of the Hakodate Custom House, and T. Midsuno, officer of the Hakodate Dockyard Company, from the report of C. Sakakiwara, Councillor of the Yokosuka Prize Court, etc., it is an undisputed fact that the *Thalia* is a vessel of Russian nationality. It is also an undisputed fact that the Hakodate Dockyard Company had received orders to repair her as a vessel. Therefore it cannot be said that she was not a vessel because of the single fact of her having been temporarily on board another vessel in order to be brought to Hakodate. And as she had the form of a vessel at the time of her capture, even if she was incapacitated for voyage, her repairs not being completed, that has no effect upon the validity of the capture. But from the report of the prize officer, her incapacity for voyage cannot be inferred, and T. Midsuno, officer of the Hakodate Dockyard Company, testifies that her repairs were completed. It cannot, therefore, be said that she was incapacitated for voyage. Again, it may be true that at the time of capture she had no instruments of navigation, no crew,

etc., but there is no reason that she should lose her character of a vessel on that account. The decision of the Yokosuka Prize Court, given upon her as a vessel, was therefore right, and was not a perversion of facts. The protest is, therefore, groundless on this point also.

The decision of this Court is as follows:

This protest is hereby rejected.

Given this 9th day of the 5th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Sect. II. Vessels That Assisted Hostile Operations of the Enemy.

Case. *The Aryol.*

The *Aryol* was a hospital ship of Russia, but she was captured by the Japanese Navy for the most indisputable reasons from the point of view of International Law. This will be one of the most interesting and novel cases added to former precedents.

Decision of the Sasebo Prize Court.

Published in the *Official Gazette*, Aug. 1, 1905.

The following decision was given on the 25th of the 7th month in the 38th year of Meiji, by the Sasebo Prize Court in the prize case of the Russian Red Cross Society Hospital ship *Aryol*.

Decision.

In the prize case of the *Aryol*, the hospital ship of the Russian Red Cross Society, the Court has examined the opinions given in writing by the Public Procurators, C. Minakami and S. Jamamoto, and gives the following decision:

Text of the Decision.

The hospital ship *Aryol* shall be confiscated.

Facts and the Grounds of the Decision.

The *Aryol*, the hospital ship of this case, is a steamer belonging to the Russian Volunteer Fleet and engaged in transportation of passengers and cargo under the Russian merchant flag, making Odessa her habitual home port. On the outbreak of the Russo-Japanese War, she was chartered by the Russian Red Cross Society for use as a hospital ship, on the 29th of the 6th month in the 37th year of Meiji. The Rus-

sian Government made request to the Japanese Government through the French Minister in Japan that the exemptions stipulated in Arts. I. to V. of The Hague Convention of July 29th, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22nd, 1864, be allowed to the said hospital ship *Aryol*. As the above request was agreed to by the Japanese Government, she was equipped as a hospital ship at Toulon, France, and having obtained the certificate of the chief naval expert, the superintendent of the Forges et Chantiers at La Seyne, France, and the commission of the Russian Government, she was attached to the Second Pacific Squadron of Russia and joined it at Tangier, in French territory in Africa. In the course of her eastward voyage with the said squadron, she pursued and overtook the *Malia*, a steamer attached to the said squadron, on the 21st of November, 1904, by order of the Commander-in-Chief of the said squadron and communicated to the above steamer, the command that the latter should keep within a signal distance. On the 21st of the 5th month in the 38th year of Meiji, she received on board, by order of the Commander-in-Chief of the said squadron, Alex Stewart, master of the British steamship *Oldhamia*, which had been captured by the *Aleg*, a warship of the said squadron, and three others, with the object of transporting them to Vladivostock, notwithstanding their being in good health. She was also instructed at Capetown or in its neighbourhood by a staff officer of the said squadron, to purchase 10,000 feet of conducting wire (2 millimetres in diameter) and 1000 feet of conducting wire (1 millimetre in diameter), both of good insulation. Moreover, when the Russian Second and Third Squadrons proceeded towards Tsushima Channel in two or three columns, this ship together with the other hospital ship, the *Kostroma*, took positions on either side of the leading warships of the said squadrons, forming a triangle with the foremost men-of-war. She was ordered to stop by the Japanese man-of-war *Sado Maru* when 10 nautical miles west of Okino Shima, at 3.30 p.m. on the 27th of the 5th month of the 38th year of Meiji, while the battle was going on between the aforesaid squadron and the Japanese Combined Fleet, near Okino Shima, and was taken to Miura Bay of Tsushima province, where she was captured as having assisted warlike operations.

The aforesaid facts are proved by the written statement of Lieutenant Commander K. Haji, who acted for the Captain of the Japanese man-of-war *Sado Maru*, by the commission of the Russian Minister Plenipotentiary in France, the certificate of the Chief Naval Expert, the superintendent of the Forges et Chantiers, at La Seyne, France, by the communication from the French Minister Plenipotentiary in Japan to the Japanese Minister for Foreign Affairs, by the

affidavits of Jacob Constantinovitch, Lafmatov, master, Alexander Bayelmann, first mate, Jacob Mulitansvski, Chief Surgeon, and Waritel Ostensaken, Chief Treasurer, all of the steamship *Aryol*, by the certificate of the ship's tonnage, the ship's log-book, the affidavit of Alex Stewart, the master of the steamship *Oldhamia*, and the certificate produced by the master and three others of the same ship.

The main point of the opinion of the Public Procurator is that as this hospital ship was evidently employed by the enemy for military purposes she should be confiscated, together with her accessories.

After due consideration the Court concludes as follows:

A hospital ship can enjoy the privilege of inviolability, only when she fulfils certain conditions and when she is engaged solely in the humane work of relieving the sick and wounded. That she is liable to capture, should she be used for military purposes by the enemy, is not only universally admitted by International Law, but is clearly shown in the stipulations of The Hague Convention for the adaptation to maritime warfare, of the principles of the Geneva Conventon. Although this hospital ship had been lawfully equipped and due notification concerning her had been given by the Russian Government to the Japanese Government, yet her act of communicating the orders of the Commander-in-Chief of the Russian Pacific Second Squadron to other vessels during her eastward voyage with the said squadron, and her attempt to transport non-invalids, the master and three others of British steamship captured by the said squadron to Vladivostock, which is a naval port of the enemy's country, are evidently acts in aid of the warlike operations of the enemy. Moreover, when the fact that she was instructed by the said squadron to purchase munitions of war and the fact that she was navigating in the position usually occupied by a reconnoitring ship, are taken in consideration, it is quite reasonable to assume that this hospital ship has been constantly employed for military purposes on behalf of the enemy's squadron. Therefore, this hospital ship is not entitled to the privilege stipulated in The Hague Convention or the adaptation to maritime warfare of the principles of the Geneva Convention, and she may lawfully be confiscated according to International Law. As no action relating to this case has been instituted within the period fixed and advertised by this Court, the decision is given as in the text at the request of the Public Procurators, dispensing with the procedure of trial, according to the last clause of Art. XVI. of the Prize Court Regulations.

Given on the 25th of the 7th month in the 38th year of Meiji, at the Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Sasebo Prize Court on the Cargo of the Aryol.

Published in the *Official Gazette*, Tokyo, on August, 1905.

The following decision was given on the 31st of the 7th month in the 38th year of Meiji, by the Sasebo Prize Court in the case of the money belonging to the Russian Red Cross Society hospital ship *Aryol*.

Decision.

In the case of the money belonging to the *Aryol*, hospital ship of the Russian Red Cross Society, the decision is given as follows:

Text of the Decision.

Currency to the amount of 54,560 francs 83 centimes (exchanged into French currency) and Russian currency amounting to 2486 rubles 44 kopecks, both belonging to the hospital ship *Aryol*, are hereby confiscated.

Facts and the Grounds of the Decision.

This money was supplied by the Russian Red Cross Society to the hospital ship *Aryol* for the payment of salaries of the officials of that society and all other expenses of the ship. On the outbreak of the Russo-Japanese War, the said hospital ship was attached to the Second Pacific Squadron of Russia, and during her eastward voyage with the said squadron, she pursued and overtook the *Malia*, a steamer attached to the said squadron, on the 21st of November, 1904, by order of the Commander-in-Chief of the said squadron and communicated to the above steamer the command that the latter should not proceed beyond a signal distance. On the 21st of the 5th month in the 38th year of Meiji, she received on board by order of the Commander-in-Chief of the said squadron, Alex Stewart, master, and three others of the British steamer *Oldhamia*, which had been captured by the *Oleg*, a warship of the said squadron, with the object of transporting them to Vladivostock, notwithstanding their being in good health. She was also instructed in the vicinity of Capetown by a staff officer of the said squadron to purchase 10,000 feet of conducting wire of good insulation of 2 millimetres in diameter and 1000 feet of the same of 1 millimetre. Moreover, when the Russian Second and Third Squadrons proceeded toward Tsushima Channel in two or three columns, this ship and the other hospital ship, the *Kostroma*, took respective positions on each side of the leading warships, forming a triangle with the foremost warships. For the aforesaid acts she was captured by the Japanese man-of-war *Sado Maru*, at Miura Bay of Tsushima, on the 27th of the 5th month in the 38th year of Meiji, as having assisted the enemy's warlike operations, and the money in question was also captured at the same time.

The aforesaid facts are proved by the written statement of Lieutenant Commander K. Haji, who acted for the captain of the Japanese man-of-war *Sado Maru,* by the affidavits of Jacob Constantinovitch Lafmatov (?), master, Alexander Bayelmann, first mate, Jacob Mulitanovski, chief surgeon, and Waritel Ostensaken, chief treasurer, of the steamship *Aryol,* by the ship's log-book, the account of money paid and received which has been produced by the chief surgeon, by the affidavit of Alex Stewart, master of the steamship *Oldhamia,* by the certificates produced by the master and three others of the same ship.

The main point of the Public Procurator's opinion is that as the Russian Red Cross Society's hospital ship *Aryol* was evidently employed by the enemy for military purposes, the money found in the ship to defray her expenses should be confiscated, as her accessories, together with the said hospital ship.

After due consideration the Court concludes as follows:

When a hospital ship loses her right to enjoy the privilege of inviolability and is captured, all her accessories also become liable to confiscation. In the present case, the hospital ship *Aryol* of the Red Cross Society of Russia, delivered the orders of the Commander-in-Chief of the Russian Pacific Second Squadron to the steamers during her eastward voyage with the said squadron, and she also received on board non-invalids, the master and three others of a British steamer which had been captured by the said squadron and attempted to transport them to Vladivostock, an enemy's naval port. These acts are evidently acts in aid of the warlike operations of the enemy. Besides, when the fact that she was instructed by the said squadron to purchase munitions of war and the fact that she was navigating in a position usually occupied by a reconnoitring ship, are taken into consideration, it is quite reasonable to assume that the said hospital ship had constantly been employed for military purposes on behalf of the enemy's squadron, and therefore she is not entitled to the privilege stipulated in The Hague Convention for the adaptation to maritime warfare of the principles of the Geneva Convention. The money in question, being the administering fund of the said hospital ship, is her indispensable accessory, like the medical apparatus, sanitary materials, provisions, etc., so it should lawfully be confiscated together with the ship.

With regard to this case, Baron Waritel Ostensaken (?), Second Commissioner of the Russian Red Cross Society with full authority within the ship and chief treasurer, filed a petition requesting the release of all the mony, but that petition has been withdrawn after the oral proceedings had been closed.

For the aforesaid reasons, the decision is given as stated in the text.

Given this 31st day of the 7th month in the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, S. Yamamoto, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Sect. III. Vessels Employed By the Hostile Government or Navigating With the Enemy's Licence.

Case I. *The Australia.*

Published in the *Official Gazette*, Tokyo, on Feb. 27, 1906.

Decision of the Yokosuka Prize Court.

The following decision was given by the Yokosuka Prize Court, on the 4th of the 11th month of the 39th year of Meiji, in the case of the American steamship *Australia* and cargo.

No. XXI.

Decision.

Petitioners—The Oceanic Steamship Company, San Francisco, Cal., U. S. A.

Representative—James Lenny (?), Master of the steamship *Australia*.

Petitioner—Lloyd's, London, England.

Representative—A. G. Morey Weals, member of Cornes & Co., 50, Yamashita Cho, Yokohama.

Attorney—H. Sato, Counsellor at Law, 40, 3-chome, Honcho, Yokohama.

In the case of the *Australia*, a steamship of the United States of America, the following decision is given after due examination.

Text of Decision.

The *Australia*, a steamship of the United States of America, and her cargo (about 1400 sacks of flour, about 200 cases of other provisions, textiles and sundries) are hereby confiscated.

Facts and Grounds for the Decision.

The steamship *Australia* is a merchant ship, registered at San Francisco, the United States of America, and flying the American flag. She was chartered on April 10th, 1905, by the Russian Government through the Kamtchatka Commercial and the Industrial Company,

Russia, for the term of about four months, to supply goods, both public and private, at several ports in the Okhotsk Sea and the Behring Sea, during the year 1905. The Russian Government appointed Nicolai Alexandrovitch Grebnicky, Councillor of the Home Department, its agent, with full powers. Being ordered to take charge of the business of the supplies, and all correspondence, both public and private, on the Far Eastern Coasts, and also to inspect affairs in several ports of these coasts, the said officer purchased, at San Francisco, a large quantity of provisions, ammunition, lead bars, lead lumps, textiles and other sundries, and loaded them in this ship. He, himself, embarked in the ship and left San Francisco on the 25th of the 5th month of this year (1905). In obedience to the order of the above officer, this ship touched at several ports in the Okhotsk Sea, visiting Petropavlovsk and the Kommandorski Islands. After distributing to those ports a greater part of her cargo and discharging the correspondence business, she returned to Petropavlovsk and was captured at that port by the Japanese man-of-war *Suma*, on the 13th of the 8th month (13 Aug., 1906) while preparing to sail again for the ports in the Okhotsk Sea in order to finish her business there. The goods found in the ship at the time of her capture, belonging to the Russian Government, are the enemy goods shipped by the Kamtchatka Commercial and Industrial Company at Petropavlovsk and consigned to ports in the Okhotsk Sea.

The above facts are proved by the written statement of Lieutenant N. Ominato, representing the captain of the Japanese man-of-war *Suma*, by the affidavits of the said officer, of James Lenny, the master of this ship, of the passengers Nicolai Alexandrovitch Grebnicky, Councillor of th Russian Home Department, Anns Kander (?) and Peter Upmann (?), employees of the Kamtchatka Commercial and Industrial Company, and of Robert H. Cole (?), first mate of this ship; by an extract from the affidavit of Grebnicky, taken in the case of the steamship *Montara*; by a copy of the written order given by the Russian Government to the officer charged with the business of supplies to the ports in the Okhotsk Sea during the year of 1905; and by the certificate of the ship's nationality, the charter party, the official log-book, the ship's log-book, the manifest and the list of the existing goods.

The main points of the petition are:

(1) The steamship *Australia*, being the property of the petitioners, the Oceanic Steamship Company, is a neutral ship registered at San Francisco, the home of the company. During the 4th month of this year, the petitioners let her by charter to the Kamtchatka Commercial and Industrial Company for about four months for a voyage to

Kamtchatka. The articles of the charter were all in accordance with common usage, and no false, or illegal statement was made in the ship's papers while performing this contract. This fact amply shows that neither the owner nor the master had any idea of violating neutrality. When the whole ship is chartered, as in this case, it is the common practice for the representative of the charterer to direct the loading and unloading during the voyage. Consequently, it was quite natural that the master did not know that the cargo of this ship contained some goods belonging to the Russian Government. Besides, he was introduced to the Russian officer as a passenger taking advantage of the voyage, and could not know on what mission he embarked. Hence, the facts that official goods were transported, and that the Russian officer on board was on a mission to supply goods, should not be taken as grounds for inferring that the owner and the master of this ship intended to place her under the control of the Russian Government, and that she had lost her neutral character. Moreover, the transportation undertaken by this ship was a commercial act of the charterer, and it would be a biased judgment to regard her as a government ship merely because her cargo contained official goods. Such a judgment would be unfounded, unless it be assumed that the charter was a fiction and that the real party to the contract was the Russian Government. The duty of the Russian officer was only to oversee the distribution of the part of her cargo at various places, and his embarkation has no bearing on the question whether or not the charter was fictitious. Moreover, considering the fact that he was sick in a hospital at Petropavlovsk, after fulfilling his mission, and expected to make the homeward voyage in the ship when she called there again after visiting one or two other ports, it is evident that he had no further connection with this ship.

(2) It is the common usage of merchant ships when entering a foreign port to hoist the flag of that state at the foremast; and this ship's flying the Russian flag when she entered Petropavlovsk was nothing more than following this usage. Hence, so long as she did not haul down the American flag by which her nationality is shown, she should not be charged with sailing under the Russian flag.

(3) The transportation of provisions undertaken by the charterer had no connection directly or indirectly with the war. The supply of provisions in the neighbourhood of Kamtchatka was suspended at that time, and the people were almost starving. It is admitted by international usage that a voyage for the welfare of mankind, unconnected with a war, exempts a ship even of the enemy's government from capture; and ships sailing for scientific, philanthropic or religious purposes enjoy the same exemption. The object of this ship was to sup-

ply provisions to starving people—an act of humanity even more than ordinary philanthropy.

(4) The charterer of this ship had hitherto undertaken the supply of provisions in foreign, as well as Russian ships. Even admitting the statement of Grebnicky that trade of foreign ships was suspended in the vicinity of the Konmandorski Archipelago, that was nothing more than the result of the monopoly of trade by the Kamtchatka Commercial and Industrial Company. In other words, the suspension was caused by the special contract between that company and the Russian Government, and not by the prohibitive law of Russia. Hence, even supposing the conditions of the special contract, or the order to the company by the Russian Government to have been modified, allowing the company to use foreign ships, a ship chartered by the company, should not be regarded as sailing under special licence of the Russian Government. "Vessels voyaging . . . under license of the enemy" of Art. VI. of the present Regulations Governing Capture at Sea, means, as was set forth in the old regulations, vessels holding passports issued by the enemy's State or sailing with charters of the enemy's State, that is, vessels which obtained such licence themselves. Therefore, to regard this ship as under the special licence of the Russian Government not only ignores the spirit of the Regulations Governing Captures at Sea, but also violates the precedents and usages of International Law.

(5) The seizure of private property at sea is a remnant of the savage usage in Europe. With the advancement of civilisation, this practice is now carried on by States within the limit necessary for war, and not as piratical plundering. Hence, captures should be discontinued as soon as peace is restored, and consequently, things captured but not yet condemned by the courts, should be released. The correctness of the above view is shown by precedents in the French-Mexican War of 1856 (may be a mistake for 1865, in the Austrian-French and Piedmontese War of 1859, in the Danish-Prussian and Austrian War of 1864, and in the last stage of Franco-Prussian War. The manner of dealing with captured things belonging to either belligerent state may be settled by treaty between them, or by the principle of reciprocity; but neutral ships and cargoes should not be subjected to the jurisdiction of belligerent prize courts after peace has been restored. This ship and cargo should therefore be released.

After due consideration, the Court concludes as follows:

It appears from the order of the Russian Government to the officer acting as its agent, and from the affidavit of that officer, that the Russian Government used annually to send provisions and other sundries to the district coasting the Okhotsk and the Bering Seas by

ships of the Volunteer Fleet, or ships chartered directly by the Government; and the governors of those districts delivered official goods to the official depots in each district and sold private goods to merchants or the general public through the chiefs of counties. But, since the outbreak of the Russo-Japanese War, communication with the ports of this coast has been suspended, and it has become impossible for the governors to deliver the goods as in times of peace. So the central Government had to despatch this officer charged with the business of supplying goods, and this ship was used in the same manner as ships of the Volunteer Fleet, or ships chartered directly by the Government. Hence, it cannot be doubted that this ship was originally employed by the Russian Government. Moreover, she was chartered by the Russian Government through the Kamtchatka Commercial and Industrial Company, and was under the control of Grebnicky. And it is evident from the statement of Grebnicky that although she was insured in London by the Kamtchatka Commercial and Industrial Company, the premium was paid by the Russian Government. It appears at first sight that this ship was chartered by the Kamtchatka Commercial and Industrial Company who had made a special contract with the Russian Government for the transportation of official goods, and that the company used her in their own regular business; but in reality she must be regarded as employed by the Russian Government. The petitioners contend that the owner and the master had no intention of violating neutrality, that they did not know that official goods were transported, or that the Russian officer on board the ship was an agent for distributing the goods, and that, as the latter had already completed his mission and was sick in a hospital at Petropavlovsk, he had no further connection with the ship. But whether or not this ship was employed by the Government must be judged by the actual service she performed, and not by the intention of her owner or master. Besides, she was captured before the expiration of the term of her charter and when she was preparing to make a second voyage to the coast of the Okhotsk Sea in order to finish her business there. The fact that the said officer had landed has no effect upon her character as a Government ship. The petitioners contend that, as the supplying of provisions in Kamtchatka and its neighbourhood was suspended at that time and the inhabitants were almost starving, the ship should be exempt from confiscation for the sake of humanity. But considering the order of the Russian Government, it cannot be said that the object of this voyage was rescue or charity. Moreover, in the copy of the Russian official document seized by the Japanese man-of-war, at Petropavlovsk, it is mentioned that all the villagers in these localities had enlisted in the volunteer corps,

and that Grebnicky came on the 29th of the 5th month, in the Russian calendar, carrying salaries and provisions for three months for three hundred volunteers. Besides, there is reason to believe that this ship supplied provisions, etc., to the troops and volunteers stationed in the littoral places at which she called. Therefore, the above contention of the petitioners has no ground. Again, the petitioners, citing several precedents, contend that captures should be absolutely discontinued as soon as peace is restored, and consequently, that things captured but not condemned by a prize court should be released; and that neutral ships and cargoes should not be subjected to the jurisdiction of prize courts of belligerent states, after peace is restored and that, therefore, this ship and cargo should be released. But the precedents cited by the petitioners were cases in which the mutual relations of belligerents had been stipulated by special conventions, or in which some particular enemy ships were released by the special ordinance, and cannot be applied to this case. The right of capture ceases with the restoration of peace but the validity of capture already made will not be affected by it. The distinction must be made between the act of capture and the act of judging whether or not the capture was reasonable. Therefore, a Prize Court, unless bound by a special convention, or ordinance, is entitled to continue the examination of either a neutral or an enemy's ship, and to give decision whether to confiscate or not, even after the restoration of peace. The precedent of the *Yik-sang* in the China-Japan War of the 27–28th year of Meiji, as well as the usages and theories of International Law show the correctness of the above view. To sum up this ship, though originally neutral, must be held as an enemy ship, because she was actually employed by the Russian Government. She is not exempt from confiscation by International Law, and her cargo being the property of the Russian Government, or of the enemy people, is subject to the same fate as the ship. For the reasons given above, both this ship and her cargo are liable to confiscation, and as to the other contentions of the petitioners, the Court sees no necessity of giving any explanation.

The decision is therefore given, as stated in the text.

Given this 4th day of the 11th month of the 38th year of Meiji, at the Yokosuka Prize Court, S. Uchida, Public Procurator of the Yokosuka Prize Court, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Feb. 28, 1906.

The following decision was given on the 13th day of the 2nd month of the 39th year of Meiji, by the Higher Prize Court, in the case of the American steamship *Australia* and cargo.

Case No. LXXXIX.

Decision.

Petitioners—The Oceanic Steamship Company, San Francisco, the United States of America.

Representative—James Lenny (?), master of the steamship *Australia*.

Petitioners—Lloyd's, London, England.

Representative—A. G. Morey Weale, Member of Cornes & Co., 50, Yamashita Cho, Yokohama.

Attorney—H. Sato, Counsellor at Law, 40, 3-chome, Honcho, Yokohama.

In the case of the American steamship *Australia* and her cargo, captured by the Japanese man-of-war *Suma*, on the 13th of the 8th month of the 36th year of Meiji, at Petropavlovsk, Russia, the Yokosuka Prize Court gave decision on the 4th of the 11th month of the 36th year of Meiji, confiscating the ship and her cargo (about 1400 sacks of flour, about 200 cases of other provision, textiles and sundries). Whereas H. Sato, attorney for James Lenny, representative of the said petitioner, the Oceanic Steamship Company, and for A. G. Morey Weale, representative of the said petitioner, Lloyd's, has filed an appeal against the said decision, the case has been examined and the following decision is given, K. Tsuzuki and B. Ishiwatari, Public Procurators of the Higher Prize Court, taking part.

The main points and reasons of the appeal, stated by H. Sato, attorney for the petitioners are:

(Here the statement is omitted to avoid repetition of the original decision.)

The reasons for the decision by the Higher Prize Court are given as follows:

The Russian Government used annually to send provisions and other sundries to the littoral provinces bordering the Okhotsk and the Bering Seas in ships of the Volunteer Fleet or ships chartered directly by the Government, and governors of those provinces delivered official goods to the official depots, and sold private goods to merchants, or the general public through the chiefs of counties. But, since the out-

break of the Russo-Japanese War, communication with the ports of the littoral provinces has been suspended, so the central Government despatched a special agent for supplies in this ship. In other words, this ship was employed by the Russian Government. The fact is proved by the Russian Government's order to its agent, Grebnicky, and by that officer's affidavit taken by the councillor in charge of this case at the Yokosuka Prize Court. In the first reason of appeal, the appellant points out the fact that this ship had been chartered by the Kamtchatka Commercial and Industrial Company and their representative was on board directing the disposal of the cargo, that Grebnicky, agent for supplies, was on board merely as a passenger, and did not control the ship, that even admitting that she was originally employed by the Russian Government, she was entirely under the control of the charterers at the time of capture, that although more than half the cargo belonged to the Russian Government, the charterers had also loaded her with their own goods and carried on business on their own account, with their representative embarked, and the appellant contends that this ship was not employed by the Russian Government. But the contents of the above mentioned order, the statement in Grebnicky's affidavit, "the Government chartered this ship through the company, so the control of her, the nomination of the places for distributing the goods and the direction of the distribution are all in my power," and the fact that at the time of capture Grebnicky being in hospital and the business of supplies not yet concluded, he had intrusted it to the charterers' representative, show that the first part of the first reason of appeal is groundless. The fact that the charterers loaded this ship with their own goods, and carried on their own business while she was engaged in carrying supplies for the Russian Government, does not alter the governmental character of this ship. Therefore, the latter part of the first reason of appeal is also groundless. In the second reason of appeal, the appellant contends that this supplying of provisions had no connection directly, or indirectly, with war, but was philanthropic, and so the ship should be exempt from capture. But an enemy ship is liable to capture even when not connected with war; and as proved by the above mentioned order of the Russian Government, this ship's mission was not philanthropic. Moreover, from a copy of a telegram seized by the Japanese man-of-war *Suma*, at Petropavlovsk, it must be inferred that this ship had supplied provisions to troops. Hence, the second reason of appeal is groundless. The appellant argues that as the above telegram was despatched on the 12th of the 5th month, Russian calendar, *i. e.*, the date of the ship's departure from San Francisco, it cannot be trusted. But in the original Russian telegram, the date of despatch is not

mentioned, and it contains the statement that Grebnicky had imported on the 29th of the 5th month, money and provisions sufficient for maintaining 300 volunteers for three months. It is evident, then, that the telegram was despatched after the 29th of the 5th month. Therefore, the third reason of appeal is groundless. The fourth reason of appeal is that things captured, but not yet condemned, should be released as soon as peace is restored. But by the precedents of International Law a prize court is entitled to examine prize cases and give decision of confiscation even after the restoration of peace, and this Higher Court deems it reasonable. Hence, the fourth reason of appeal is, also, groundless. For the above reasons, the original decision to confiscate this ship together with her cargo, regarding her as an enemy's ship, is reasonable.

The decision is therefore given as follows:

This appeal is hereby dismissed.

Given this 13th day of the 2nd month of the 39th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case II. *The Montara.*

Decision of the Yokosuka Prize Court.

Published in the *Official Gazette*, Tokyo, on Feb. 27, 1906.

The following decision was given on the 4th day of the 11th month of the 38th year of Meiji, by the Yokosuka Prize Court, in the case of the American steamship *Montara* and her cargo.

Decision.

No. XXII.

Petitioner—The Pacific Coast Steamship Company, San Francisco, The United States.

Representative—Thomas Riley, master of the *Montara*.

Petitioner—Lloyd's, London, England.

Representative—A. G. M. Weale, of Cornes & Co., 50 Yamashita cho, Yokohama.

Advocate—H. Sato, Counsellor at Law, 40 3-chome, Honcho, Yokohama.

In the case of the American steamship *Montara* and her cargo, trial has been held and the following decision given:

Text of Decision.

The American steamship *Montara* and her cargo, consisting of 25 bags of leaf tobacco, 11 cases of tobacco, 17 cases of sugar, a steam

launch, 2 small boats, some firewood, 4000 salted seal skins, and 30 skins of Siberian sable, red fox, otter, ermine, and bear, are hereby confiscated.

Facts and Grounds of Decision.

The steamship *Montara* is the property of the petitioner, the Pacific Coast Steamship Company, and is a merchantman registered at San Francisco, flying the American flag. The Kamtchatka Commercial and Industrial Company, in order to perform the duty which it owed to the Russian Government of supplying the Kommandorski Islands and vicinity with daily necessaries, chartered the ship for about 5 months, from May 1st, 1905, the contract being made at San Francisco, on March 22nd, between the owners and the company's agent, Rosblam (?) Company. The ship, in pursuance of the charter party, took in a cargo of about 200 tons, consisting of provisions, agricultural implements, sugar, and tobacco, to be supplied to the people of those districts, and left San Francisco for Kamtchatka, Russia, on July 9th, 1905. She called at Copper Island, Behring Island, Petropavlovsk, and west Kamtchatka, and there discharged certain parts of her cargo and took in goods belonging to the Kamtchatka Commercial and Industrial Company, and furs bought by the same company. She then went back to Behring Island, and while unloading the remainder of the cargo at Nikolski Road, on the 16th of the 8th month of the 38th year of Meiji, at 3 p.m., she was discovered by the Japanese man-of-war *Idzumi*. After being visited, she was captured as being in the Russian Government service and employed for the transportation of contraband of war. The Kommandorski Islands and vicinity were originally closed to foreign vessels; but since the outbreak of the Russo-Japanese war, the Russian Government has given a licence to the Kamtchatka Commercial and Industrial Company and the East Siberian Company, permitting vessels chartered by the two companies to sail in those parts, and the ship under consideration, though a foreign vessel, was navigating under this licence. And the cargo on board, mentioned in the text, consisting of the remainder of the commodities, furs bought, the steam launch, etc., is the property of the Kamtchatka Commercial and Industrial Company.

The above facts are clear from the statement and the list of goods submitted by Lieutenant K. Inokado, representative of the captain of the *Idzumi*; from the testimony given by Thomas Riley, master; James Bowen, first mate, and M. Bitty, boatswain, of the *Montara*; Lieutenant Inokado and Nicolai Bruggen, representatives of the Kamtchatka Commercial and Industrial Company, and Nicolai Alexandrovitch Grebnicky, counsellor of the Russian Home Department and agent for supplying

provisions to the coasts of the Okhotsk and the Bering seas for 1905, and from the certificate of the ship's nationality, the charter party, the six bills of lading, the clearance from San Francisco, the ship's log, the official log, the copy of testimony given by Grebnicky in the case of the American steamship *Australia*, the copy of the orders of the Russian Government given to the supply agent, etc.

The purport of the petition is as follows:

The ship under consideration has been the property of the petitioners, the Pacific Coast Steamship Company, since before the outbreak of the Russo-Japanese War, and is a neutral vessel, registered at San Francisco, flying the American flag. In March, 1905, the Kamtchatka Commercial and Industrial Company entered into a contract with the owners, and chartered her for about 5 months, with the object of sending her to the Okhotsk Sea, Kamtchatka, and vicinity. The contract was drawn up, according to common usage, on a printed form. While fulfilling the contract, no fictitious ship's papers were prepared, nor any irregular entry made, from which it will be seen that the owner had no intention of violating neutrality. The ship took in, at San Francisco, tobacco, sugar, agricultural implements, ironware, provisions, etc., which are daily necessaries of the people of Kamtchatka and the adjacent islands. She left port on the 9th of the 7th month and went round Copper Island, Petropavlovsk, and vast Kamtchatka, where she discharged her cargo and took in goods to be transported to San Francisco. On her way back, she called at Behring Island and anchored at Nikolski Road. On the 16th of the 8th month, in the afternoon, when she had discharged all the goods to be landed there and was making preparations to leave for San Francisco that evening, she was captured, on the grounds that a part of her cargo was contraband of war and that she was in the employ of the Russian Government—her charterer, the Kamtchatka Commercial and Industrial Company, being under the control and protection of that Government.

(1) The ship did not take on board any contraband of war. Supposing the goods on board were contraband, according to theory and precedent, the ship is not liable to confiscation after landing the contraband.

(2) The charterers hold a monopoly, granted by the Russian Government, for buying furs of sea animals in the Kommandorski Islands and vicinity, but they have never changed their character as a private concern. Hence, this ship cannot be regarded as in the Russian Government employ because she was chartered by the company.

(3) The closing of northern Kamtchatka to foreign vessels was not in the interest of Russia, and even before the war foreign vessels were not forbidden to navigate there. Admitting that those districts were

opened to foreign vessels on the outbreak of the war, it was a general removal of the prohibition, not a special licence given to the ship under consideration.

And were it regarded as a special licence, it was nothing more than a legal transaction between the Russian Government and the Kamtchatka Commercial and Industrial Company, and not a licence obtained by this particular ship. "Vessels voyaging by licence of the enemy," (Art. VI. of the Japanese Regulations Governing Captures at Sea), means vessels that have themselves obtained such licence from the enemy's state. And even a ship navigating with such a special licence should not be regarded as guilty of breach of neutrality after she has discharged her whole cargo.

(4) The Japanese Regulations Governing Captures at Sea are instructions given to the military authorities, and are not applicable to vessels other than Japanese, especially outside Japanese territorial waters, except when they are in conformity with the precedents and spirit of International Law.

(5) The transportation, in this case, was made for humanity, the goods being provisions for the starving people of distant islands.

(6) Captures at sea necessitated by war should be discontinued at the restoration of peace, and, consequently, it is proper to release prizes on which a decision has not yet been given. This is very clear from the precedents at the close of the French-Mexican war of 1856 (may be a mistake for 1865), of the Austrian-French and Piedmontese war of 1859, of the Danish-Prussian and Austrian war of 1864, and of the Franco-Prussian war. Prizes belonging to belligerents may be judged according to treaty or on the principle of reciprocity, but neutral ships and goods are not subject to the jurisdiction of belligerent prize courts after peace has been restored. This ship and cargo should, therefore, be released.

In order to prove the fact mentioned in the first part of (3), the petitioners produced reports on vessels entering and leaving Vladivostok, published in the *Official Gazette* of the 12th of the 3rd month of the 35th year of Meiji and the 14th of the 10th month of the 36th year of Meiji, and Monthly Reports of the Yokohama customs, Supplement No. 8 (report of agent Yashiro and Inspector Okakura).

After due consideration, the Court concludes as follows:

When a belligerent gives a licence to certain ships for trade in a district closed to foreign vessels in time of peace, the other belligerent may confiscate such vessels, even of neutral ownership, voyaging under such licence, as having the enemy character, and also the goods on board belonging to enemy persons. This is recognised by the precedents and theory of International Law. The Kommandorski and other islands,

where the ship under consideration was trading, were formerly closed to foreign vessels. But on the outbreak of the Russo-Japanese war the Russian Government gave a licence to the Kamtchatka Commercial and Industrial Company and the East Siberia Company, permitting vessels chartered by the two companies to navigate to those districts, because Russian vessels alone were not sufficient to carry provisions there. The ship under consideration sailed to the Kommandorski Islands and other places by virtue of this licence. This is very clear from the testimony given by Grebnicky. She was actually captured at anchor in Nicolski Road, of the Kommandorski Islands. She must, therefore, be considered as an enemy ship and the goods on board as enemy goods, being the property of the Kamtchatka Commercial and Industrial Company, the charterers of the ship.

(*a*) The petitioners request the release of the ship on the ground that the owner and the master had no intention of violating neutrality. But whether or not the ship navigated under Russian licence is a question of fact, to be decided by the acts of the ship herself, and the intention of the owner or the master has nothing to do with it.

(*b*) The petitioners contend that the Kommandorski Islands and vicinity were open to the trade of foreign vessels before the war, producing as evidence two numbers of the *Official Gazette* and a supplement to the *Monthly Reports of Customs*. But these are not sufficient to prove that foreign vessels freely traded in the Kommandorski Islands and vicinity without permission of the Russian Government. Consequently the fact testified by Grebnicky, Governor of the Kommandorski Islands and supply agent for the coasts of the Behring Sea, etc., for 1905, cannot be denied.

(*c*) The petitioners argue that, admitting that those districts were opened to foreign vessels on the outbreak of the war, it was a general removal of the prohibition, not a special licence given to this ship, and that, were it a special licence, it was a licence given to the Kamtchatka Commercial and Industrial Company, not to this ship. But it is clear, from the testimony of Grebnicky, that the licence was given to vessels chartered by the Kamtchatka Commercial and Industrial Company and one other company, and that any other foreign vessels navigating there would infringe on the Russian prohibition. Admitting that the licence was given to the chartering company and not to the ship herself, she navigated in the prohibited districts by virtue of that licence, and therefore has the enemy character, as explained above.

(*d*) The petitioners argue that the ship should not be confiscated, because her voyage was made for the sake of humanity. But it was in performance of the ordinary business of the Kamtchatka Commercial and Industrial Company of carrying supplies to those islands, and was

a kind of traffic. No charity or humanity can be recognised in the undertaking.

(*e*) The petitioners argue that captures at sea should not be made after the restoration of peace, and that the ship and cargo under consideration are not subject to the jurisdiction of Prize Courts; and that, consequently, they should be released. But the precedents cited by the petitioners were cases in which the mutual relations of belligerents had been stipulated by special conventions, or in which some particular enemy ships were released by special ordinance, and they do not apply to this case. The belligerent right of capture ceases with the restoration of peace, but not the validity of captures already made. The distinction must be made between the act of capture and the act of judging whether or not a capture was reasonable. Therefore, a Prize Court, unless bound by special convention or ordinance, should continue the examination of both neutral and enemy's ships, and give decision whether to confiscate or not, even after the restoration of peace. The precedent of the *Yik-sang* case in the Chino-Japanese War of the 27th–28th year of Meiji, as well as the usage and theory of International Law, show the correctness of this view. For the above reasons the ship and cargo under consideration are liable to confiscation, and as to the other contentions of the petitioners, the Court sees no necessity of giving any explanation.

Therefore, the decision as stated in the text has been given.

Given this 4th day of the 11th month of the 38th year of Meiji, at the Yokosuka Prize Court, the Public Procurator, S. Uchida, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Yokosuka Prize Court.

CHAPTER III.

CONTRABAND PERSONS.

During the war we captured neutral vessels for various reasons, as already shown in the tabulated statement. We are now dealing with them, classifying them according to causes of detention, such as contraband carriers, blockade runners, etc.

In International Law there are not frequent instances in regard to "Contraband Persons." (This phrase is not quite scientific, and many recent authors do not recognise it, still, as it stands in the Japanese Prize Law, it is used for this book.)

The following is the single case in this concern which added to the former precedents by the late war:

Case. *The Nigretia.*

Decision published in the *Official Gazette*, Tokyo, of Nov. 16, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 17th of the 4th month of the 38th year of Meiji, by the Sasebo Prize Court, in the case of the British steamship *Nigretia.*

Decision.

Petition No. II.

Petitioner—Samuel Harrison, British subject, master of the steamship *Nigretia*, West Hartlepool, England.

Attorney—T. Shigeto, Counsellor at Law, 33 Hikichi Machi, Nagasaki.

Attorney—S. Hatakeyama, Counsellor at Law, 18 Hirado Machi, Nagasaki.

In the case of the British steamship *Nigretia*, decision is given as follows:

Text of Decision.

The steamship *Nigretia* is hereby confiscated.

Facts and Reasoning.

The steamship *Nigretia*, being the property of Aran & Co. (?), Newcastle on Tyne, England, is a merchant ship under the British flag,

chiefly engaged in the transportation of goods. On the 22nd of the 10th month in the 37th year of Meiji, Alexander Serebrenick, a Russian subject, made a contract at Shanghai with Moller & Co., agents of the said Aran & Co., for chartering this ship, and loaded her with 70,000 cases of kerosene oil. He also caused this ship to take on board Naval-Lieutenant Parwell Mihailovitch Plenn, the captain of the Russian torpedo boat *Ratstoropny*, which had lately escaped from Port Arthur and blown herself up at Chefoo, under the alias Friederick Pilsener, German subject, and Russian Sub-Lieutenant Crandy Warentinowich Sheweniyoff, also an officer of the said torpedo boat, under the alias Jan Golsahalky, a German subject, together with Selgay Poletika, a Russian merchant, pretending that they were his clerks or supercargo, and giving each of them letters, in which he asked them to manage some commercial matters. This ship left Shanghai on the 16th of the 12th month, and when she had reached the Strait of Tsushima she was captured by the Japanese man-of-war *Tsushima*, under suspicion of carrying contraband persons, at 2 p.m. on the 19th of the same month, in N. lat. 35° 18′ and E. long. 129° 50′.

The above facts are proved by the written statement of T. Sento, Captain of the *Tsushima*, by the affidavit of Samuel Harrison, Master of the *Nigretia*, Russian Naval Lieutenant Parwell Mihailovitch Plenn, Russian Sub-Lieutenant Crandy Warentinowich Sheweniyoff, and Russian merchant Selgay Poletika, by the certificate of the ship's nationality, the charter party, the bill of lading, and the letters given to the three passengers by Alexander Serebrenick.

The main points of the statements of the attorney for the petitioners are:

The petitioners took on board three persons, i. e., Plenn, Sheweniyoff, and Poletika, according to the charter party, which stipulated that he should take on board one supercargo and two passengers. He believed the charterer's word, and thought that Plenn and Sheweniyoff were Germans. Moreover, they were not in the uniform of Russian officers, but pretended to be Germans, and concealed their position by talking in the German language among themselves. Therefore, the petitioner did not know they were Russians, and nothing proves that he knew. Consequently there is no fault on the part of the petitioner with regard to the embarkation of the two Russian officers. Besides, the said two Russian officers being the same persons released by the Chinese Government on parole, have no longer the capacities of naval officers and are not contraband persons.

For the above reasons this ship should not be confiscated for the transportation of contraband persons.

The main point of the opinion of the Public Procurator is: the two

persons, Plenn and Sheweniyoff, are Russian naval officers, and the ship which carried them should be confiscated for the transportation of contraband persons.

After due consideration, the Court concludes as follows:

It has been generally admitted by the rules and usages of modern International Law that a neutral ship which carries military persons for a belligerent state is liable to confiscation for the transportation of contraband persons, unless it is proved that the master was not in fault and did not know the fact. The steamship *Nigretia* attempted to carry two Russian naval officers to Vladivostok, and undoubtedly she was engaged in the transportation of contraband persons. The petitioner contends that he did not know the two persons who embarked in his ship were Russian naval officers, and he was not to blame for that ignorance; that this matter was the act of the charterer, and so the ship should not be confiscated. But there is nothing to prove that the master did not know the fact, and even granting he did not, it cannot be held that he was faultless, because he took them on board as Germans, believing, recklessly, the charterer's word. Again, the petitioner contends that the said Russian naval officers being the persons released by the Chinese Government on parole, have no longer the capacities of combatants, and consequently are not contraband persons. But whether or not they gave parole to the Chinese Government makes no difference so far as their status of combatants is concerned. Moreover, considering the fact that they attempted to go secretly to Vladivostok, the base of the Russian squadron, under alias, it cannot be doubted that they were on a military mission or were going to render military service. As the foregoing explanations show, this ship was engaged in the transportation of combatant persons, so she should be confiscated. The decision is, therefore, given as in the text.

Given this 17th day of the 4th month of the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, S. Yamamoto, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case. (Cargo.)

Published in the *Official Gazette* on Nov. 16, 1905.

The following decision was given on the 17th of the 4th month of the 38th year of Meiji, by the Sasebo Prize Court, in the case of the cargo of the British steamship *Nigretia*.

Decision.

Petition No. III.

Petitioner—Alexander Serebrenick, a Russian merchant, Range Road, Shanghai, China.

Attorney—T. Shigeso, Counsellor at Law, 33 Hikichi Machi, Nagasaki.

Attorney—S. Hatakeyama, Counsellor at Law, 18 Hirado Machi, Nagasaki.

In the case of the cargo of the British steamship *Nigretia*, decision is given as follows:

Text of Decision.

Seventy thousand cases of kerosene oil, loaded in the steamship *Nigretia*, are hereby confiscated.

Facts and Reasoning.

Seventy thousand cases of kerosene oil, the cargo in consideration, were loaded in the steamship *Nigretia*, chartered at Shanghai, China, by the petitioner, Alexander Serebrenick, and despatched for Vladivostok on the 16th of the 12th month in the 37th year of Meiji. The petitioner caused the steamship *Nigretia* to take on board Russian naval Lieutenant Parwell Mihailovitch Plenn, the Captain of the Russian torpedo boat *Ratstoropny*, which had lately escaped from Port Arthur and blown herself up at Chefoo, under the alias Friederick Pilsner, a German subject, and Russian Sub-Lieutenant Crandy Warentinowich Sheweniyoff, also an officer of the said torpedo boat, under the alias Jan Golschalky, a German subject, together with Selgay Poletika, a Russian merchant, pretending that they were his clerks or supercargoes, and giving each of them letters intrusting them with the management of some commercial matter. When this ship was captured by the Japanese man-of-war *Tsushima*, under suspicion of carrying contraband persons, at 2 p.m. on the 19th of the 12th month in the 37th year of Meiji, in N. lat. 35° 18′ and E. long. 129° 50′, the cargo in confiscation was captured at the same time.

The above facts are proved by the written statement of T. Sento, Captain of the *Tsushima*, by the affidavits of Samuel Harrison, Master of the *Nigretia*, Russian naval Lieutenant Parwell Mihailovitch Plenn, Russian Sub-Lieutenant Crandy Warentinowich Sheweniyoff, and Russian merchant Selgay Poletika, by the certificate of the ship's nationality, the charter party, and the letters given to the three passengers by Alexander Serebrenick.

The main points of the statement of the attorneys for the petitioner are:

Kerosene oil, the cargo in consideration, is not contraband of war. Though it is property of a subject of the enemy state, it was loaded in a neutral ship and its destination is not a blockaded port. Hence, this cargo is not liable to confiscation by a belligerent, so it should be released.

The main point in the opinion of the Public Procurator is: The petitioner attempted to carry two Russian naval officers to the enemy's territory under the pretext that they were his clerks or supercargoes; that is to say, he engaged in the transportation of contraband persons. Therefore the cargo in consideration, belonging to him, should be confiscated.

After due consideration, the Court concludes as follows:

According to the principle of modern International Law, when a ship engages in prohibited transportation (unneutral service), she is liable to confiscation, and when the owner of her cargo has participated in the above transportation, his cargo is also liable to confiscation. The cargo in consideration was loaded in the steamship *Nigretia* by the petitioner, Alexander Serebrenick, who attempted to carry in that ship two Russian naval officers to Vladivostok. In fact, Serebrenick is the person who planned and executed the aforesaid illegal transportation. Hence, the goods belonging to him should be confiscated, no matter whether they are contraband of war or not. The decision is therefore given as in the text.

Given this 17th day of the 4th month of the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, S. Yamamoto, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Nov. 16, 1905.

The following decision was given on the 2nd of the 11th month of the 38th year of Meiji, by the Higher Prize Court, in the appeal case of the British steamship *Nigretia*.

Decision.

Case No. XLIV.

Petitioner—Samuel Harrison, master of the steamship *Nigretia*, West Hartlepool, England.

Attorney—S. Hatakeyama, Counsellor at Law, 18 Hirado Machi, Nagasaki.

Attorney—T. Shigeto, Counsellor at Law, 33 Hikichi Machi, Nagasaki.

In the case of the British steamship *Nigretia*, captured by the Japanese man-of-war *Tsushima* on the 19th of the 12th month of the 37th year of Meiji, in N. lat. 35° 18′ and E. long. 129° 50′, the Sasebo Prize Court gave decision, on the 17th of the 4th month of the 38th year of Meiji, confiscating the said steamship. Whereas, S. Hatakeyama and T. Shigeto, attorneys for the said petitioner, Samuel Harrison, have filed an appeal against the above decision, the case has been examined and the following decision is given, K. Tsuzuki and B. Ishiwatari, Public Procurators of the Higher Prize Court, taking part.

The appeal by S. Hatakeyama and T. Shigeto, attorneys for the petitioners, against the original decision is based upon the following grounds:

(1) The steamship *Nigretia*, having been chartered at Shanghai by a Russian subject, Alexander Serebrenick, on the 22nd of the 10th month of the 37th year of Meiji, left Shanghai for Vladivostok on the 16th of the 12th month in the same year, with a cargo of 70,000 cases of kerosene oil. It is true that this steamship took on board Russian Naval Lieutenant Parwell Mihailovitch Plenn and Sub-Lieutenant Crandy Sheweniyoff, believing that the former was Friedrich Pilsener, a German subject, and the latter was Jan Golschalky, also a German subject. But it was because the charter party stipulated that she should take on board one supercargo and two passengers; and on the day before her departure the ship was notified that two persons would embark in her as supercargoes, and on the day of her departure two supercargoes came on board; the charterer, Serebrenick, told the petitioner that the above two persons were Germans in his employ, and it is needless to say that the petitioner did not suppose they were Russian combatants; besides, there was nothing suspicious about them. The above facts are proved by the affidavit of Russian Naval Lieutenant Parwell Mihailovitch Plenn, Russian Sub-Lieutenant Crandy Warentinowich Sheweniyoff, by the written statement of the charterer, Alexander Serebrenick, by the charter party, and exhibits A No. 1 to No. 3. However, the original court unlawfully ruled that the petitioner engaged in the transportation of contraband persons. In the former decision it was explained that there was nothing to prove that the master did not know that the persons who came on board were combatants; and that, even granting he did not, it could not be held that he was faultless, because he took them on board as Germans, believing, recklessly, the charterer's word. But it is a general rule of evidence that the burden of proof rests with the party who makes a positive affirmation, and not with the party who makes a negative affirmation; and the same rule should be applied to questions relating to public law. Even supposing the public law requires that, in a case like this, the petitioner should pri-

marily give his proof, the above enumerated evidences will amply prove his ignorance. Therefore, in order to hold that he had knowledge of the fact, sufficient proof must be given by the party who makes that assertion. The ruling of the original court, without giving any proof that the petitioner had knowingly engaged in the transportation of combatants, must be regarded as unlawful, because it was not in conformity with the fundamental principle of the law of evidence.

(2) Plenn and Sheweniyoff were officers of the Russian torpedo boat *Ratstoropny*, and hence they are apparently contraband persons. But before coming on board this ship they had been set free by the Chinese Government, on giving their parole that they would not henceforth engage in battle, and consequently it must be said that they were no longer combatants. "Contraband person" means, as stipulated in the Japanese Regulations Governing Captures at Sea, the enemy's soldiers or sailors, or any other person transported in order to engage in the military service of the enemy. Hence, although a person may formerly have been a combatant, he cannot be regarded as such after having given his parole and expressed his will not to participate in battle. It follows that a ship carrying such a person is not liable to confiscation.

(3) Even granting that the above-named two persons were contraband persons, yet this ship should not be confiscated. The reason a ship carrying contraband persons is liable to confiscation is because the act is not ordinary commercial transportation, but a military act to assist one of the belligerents. International Law holds such an act to be auxiliary military service or prohibited sea carriage (unneutral service). In order to charge any ship with the above act, the following must be proved: (*a*) The object of the voyage must be the transportation of contraband persons; (*b*) the owner of the ship or her master must be engaged in the transportation under contract with the enemy's Government or by the will of the enemy's Government; (*c*) the persons must be taken on board in the capacity as combatants. That the object of this ship's voyage was ordinary commerce is proved by the charter party, and by the fact that transportation of kerosene oil, which is non-contraband, was the object of her voyage. There is no proof that this ship intended to assist the enemy's state. The necessary condition (*a*) does not apply to this ship. The transportation by this ship was made at the request of Serebrenick & Co., a private firm, and not under contract with the enemy's Government nor by their will. The necessary condition (*b*) does not apply to this ship. The master was under no obligation to investigate whether or not the passengers in plain dress were combatants. The two persons, Plenn and Sheweniyoff, called themselves Germans, and, being in common dress, they could not be taken for combatants. The necessary condition (*c*) does not apply to this

ship. In short, this ship did not carry contraband persons, so she should not be confiscated.

The main points of the response of C. Minakami and S. Yamamoto, Public Procurators of the Yokosuka Prize Court, are:

(1) The petitioner did not give any proof of his statement that he did not know that the two persons who came on board were Russian naval officers. Moreover, in the letters given by the charterer to each of them, which were shown to the master by them at the time of their embarkation, the following statement was contained in them: "This is a good opportunity not easily to be obtained lately. . . . I hope for your safe return. . . ." Such wording would not be used by an employer to his ordinary business employees, yet the master took the above two persons as Germans in the charterer's employ, recklessly believing his word. Hence, the master, the petitioner, cannot be regarded as faultless.

(2) Though the two persons, Plenn and Sheweniyoff, had been set free by the Chinese Government on giving parole not to engage in war again, they have not lost, on that account, their capacities of military persons, and it cannot be taken for granted that they would observe their parole and not engage in future battles. On the contrary, it must be held that they were running away in order to engage in battle, violating their parole, because not only were they going to Vladivostok, the only Russian naval base in the Orient at the time, but their evil intentions are sufficiently proved by the fact that they disclosed themselves as ordinary neutral traders, belying their nationality, names, and status. Besides, the fact that Serebrenick & Co., the charterers of this ship, and the master colluded in the fraud is clearly proved by the stipulation in Art. XVI. of the charter party, by the fact that the said company gave the said two persons letters intrusting them with the disposal of the cargo, and by the master's statement when he was examined by the counsellor in charge of this case at the original court.

(3) To make a contract with the enemy's Government, or to act under its will, is not a necessary condition for constituting the offence of breach of neutrality, which the transportation of contraband persons is. When the owner of a ship, her charterer, or her master carries contraband persons, or letters with evil intention, then the above charge may be supported, as shown by many precedents. The petitioner contends that he was faultless, because Plenn and another person came on board in plain dress. This contention might be admitted in the case of an ordinary passenger ship of fixed service, but cannot be maintained in the case of a cargo ship bound for a naval port of a belligerent, as in this case. To sum up, with regard to prohibited carriage by sea, neutrals who engage in that trade cannot escape their responsibilities,

no matter whether or not they knew the circumstances, or acted under threat and against their will. The more so in this case, where the charterer, the master, and the fugitive combatants were all in collusion. For the above reasons this appeal should be dismissed.

The reasons of decision of the Higher Prize Court are given as follows:

The steamship *Nigretia* left Shanghai for Vladivostok, having on board Russian Naval Lieutenant Plenn and Sub-Lieutenant Sheweniyoff, and a cargo of 70,000 cases of kerosene oil. The petitioner contends that as the said two persons had been released by the Chinese Government on parole, they were no longer combatants, and consequently cannot be regarded as contraband persons. But the military persons, released on parole, cannot be held to have been deprived of their military capacities. And even though they had given their parole, it does not necessarily follow that they would certainly observe it. In the present case the said two persons attempted a secret voyage to a naval port of the enemy's state, belying their nationality and names, and concealing their status as the enemy's combatants. This clearly shows that they were on some warlike mission or going to join in military service, and undoubtedly they were contraband persons. The facts that Serebrenick & Co., the charterers of this ship, caused the said Russian combatants to embark in her under false names, Pilsener and Golschalky, as Germans, and gave them letters intrusting them with the superintendence of landing the cargo and the payment of accounts, in order to make it appear that they were business employees, and not the enemy's combatants, are amply proved by the affidavits, taken before the original court, of the passenger Poletika, the said Plenn and Sheweniyoff, and of the master of this ship, and by the letters given to Plenn and Sheweniyoff by Serebrenick, and by the charter party. Considering these facts, it must be held that the object of this ship's voyage was the transportation of combatant persons. When a ship's object of voyage is the transportation of combatant persons, her confiscation is permitted by International Law. Besides, the above-named documentary evidence proves that the master of this ship knew that the said two persons were Russian combatants, and even on that ground alone this ship may lawfully be confiscated. Hence, the decision of the original court confiscating this ship was quite reasonable. As to other reasons, there is no need of giving any explanation. The decision is therefore given as follows:

This appeal is hereby dismissed.

Given this 2nd of the 11th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Decision of the Higher Prize Court on the Same Case. (Cargo.)

Published in the *Official Gazette*, Tokyo, on Nov. 16, 1908.

The following decision was given on the 2nd of the 11th month of the 38th year of Meiji, by the Higher Prize Court, in the appeal case of the cargo of the British steamship *Nigretia*.

Decision.

Case No. XLV.

Petitioner—Alexander Serebrenick, a Russian subject, 25 Range Road, Shanghai, China.

Attorney—S. Hatakeyama, Counsellor at Law, 18 Hirado Machi, Nagasaki.

Attorney—T. Shigeto, Counsellor at Law, 33 Hikichi Machi, Nagasaki.

In the case of the cargo of the British steamship *Nigretia*, captured by the Japanese man-of-war *Tsushima*, on the 19th of the 12th month of the 37th year of Meiji, in N. lat. 35° 18′ and E. long. 129° 50′, the Sasebo Prize Court gave decision, on the 17th of the 4th month of the 38th year of Meiji, confiscating 70,000 cases of kerosene oil loaded in the said steamship. Whereas, S. Hatakeyama and T. Shigeto, attorneys for the said petitioner, Alexander Serebrenick, have filed an appeal against the said decision, the case has been examined and the following decision is given, K. Tsuzuki and B. Ishiwatari, Public Procurators of the Higher Prize Court, taking part.

The appeal by S. Hatakeyama and T. Shigeto, attorneys for the petitioner, against the former decision, condemning 70,000 cases of kerosene oil loaded in the steamship *Nigretia*, is based upon the following grounds:

During the 11th month of the 37th year of Meiji, the petitioner entered into a contract with a Russian merchant, A. L. Kiuotovsky, who had his main office at Harbin, and a branch office at Vladivostok, with one Haymann as manager, for the sale of 150,000 cases of kerosene oil. He bought the oil at Shanghai and made preparation for loading it in the steamship *Nordpol*, but her licensed capacity of burden was limited to 90,000 cases. So 90,000 cases were loaded in that ship. The remaining 60,000 cases were loaded in the steamship *Nigretia*, together with other 10,000 cases which the petitioner bought on speculation to sell at Vladivostok, and despatched for Vladivostok on the 16th of the 12th month of the same year. It is true that the petitioner caused Russian Naval Lieutenant Parwell Mihailovitch Plenn and Sub-Lieutenant Crandy Warentiniwich Sheweniyoff to embark in the steamship

Nigretia and intrusted them with commercial matters, believing that the former was a German, Friedrich Pilsener, and the latter a German, Jan Golschalky. But he was entirely unaware that they were Russian naval officers, as is proved by the affidavits of Samuel Harrison, the master of the *Nigretia*, of the said Plenn and of Sheweniyoff, and by the charter party, and by exhibits A No. 1 to No. 3. Nevertheless, the original court judged that the petitioner planned and executed the prohibited carriage by sea, transporting two Russian naval officers under the pretence that they were his clerks or supercargo. This judgment was founded on an unreasonable assumption of fact, and therefore it is unlawful. Besides, the original court took too extensive a view of the penalty for prohibited carriage by sea (unneutral service), and judged that when the owner of a cargo has participated in prohibited carriage by sea the cargo is liable to confiscation. As a rule, in a case of prohibited carriage by sea, the law of confiscation is applied in quite a different manner from the case of the carriage of contraband goods. In the former the general principle is to confiscate the ship only and to release the cargo, while in the latter the cargo only is liable to confiscation and the ship is released. The only exception to this principle is when ship and cargo belong to the same owner, or when the cargo has the nature of enemy goods, in which cases both the ship and the cargo are liable to confiscation. This principle is admitted by international usage, and embodied in the Japanese Regulation Governing Captures at Sea, Art. XLII., par. 2, Art. XLVI., and Art. XLVII. Therefore it is evident that the extensive view of the original court should not be applied to this case, in which the owner of the ship and the master were different from the owner of the cargo.

The main points of the response of C. Minakami, Public Procurator of the Sasebo Prize Court, are:

(1) The petitioner explains that though he caused two Germans, Friederich Pilsener and Jan Golschalky, to embark in the steamship *Nigretia*, in order to manage the oil and other business, he did not know that they were Russian naval officers. But one must thoroughly know to whom one gives charge of one's commercial business, and it cannot be conceived that the petitioner would employ these persons without full knowledge of their names, nationalities, and status. Moreover, considering the fact that the petitioner purposely handed to the above two persons letters addressed to them, and considering the wording of those letters: "This is a good opportunity not easily to be obtained lately. . . . I hope for your safe return . . .," it is evident that the petitioner attempted to transport the above two persons to Vladivostok knowing that they were Russian naval officers, but pretending they were his clerks or supercargo.

(2) The petitioner contends that when a ship has committed the offence of prohibited carriage by sea (unneutral service) she may be confiscated, but confiscation of her cargo is in violation of a fundamental rule of International Law. But it is a rule of International Law that a ship engaged in prohibited carriage by sea is liable to confiscation, and when the owner of the cargo has participated in that offence the cargo is also liable to confiscation. The petitioner being the person who planned and executed the transportation of the two Russian naval officers to Vladivostok, under the disguise of ordinary merchants, as explained before, undoubtedly participated in the offence of prohibited carriage by sea, and consequently the goods belonging to him should reasonably be confiscated. For the above reasons this appeal should be dismissed.

The reasons for the decision by the Higher Prize Court are given as follows:

The steamship *Nigretia* started from Shanghai for Vladivostok, having on board Russian Naval Lieutenant Plenn and Sub-Lieutenant Sheweniyoff, and a cargo of 70,000 cases of kerosene oil. The fact that Serebrenick & Co., the charterers of this ship, caused the said Russian combatants to embark in her under false names, Pilsener and Golschalky, and as Germans, and gave them letters intrusting them with the superintendence of landing the cargo and the payment of accounts, in order to make it appear that they were their business employees, and not the enemy's combatants, are amply proved by the affidavits, taken before the original court, of the passenger Poretika, the said Plenn and Sheweniyoff, and of the master of this ship, by the letters given to Plenn and Sheweniyoff by Serebrenick, and by the charter party. Considering these facts, it must be inferred that the object of this ship's voyage was the transportation of contraband persons. And the cargo, belonging to the person who has used a ship for the special purpose of transporting contraband persons, may be confiscated according to International Law. Hence, the former decision confiscating this cargo was quite reasonable, and the appeal is groundless.

The decision is, therefore, given as follows:

This appeal is hereby dismissed.

Given this 2nd day of the 11th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

CHAPTER IV.

CONTRABAND GOODS.

Case I. *The Aphrodite.*

Published in the *Official Gazette,* Tokyo, on Aug. 29, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 4th day of the 5th month in the 38th year of Meiji, by the Yokosuka Prize Court, in the case of the British steamship *Aphrodite* and her cargo.

No. XVII.

Decision.

Petitioners—The Cornhill Steamship Company, No. 81, Grace Church Street, London, England.

Representative—F. O. Edmands, Master of the steamship *Aphrodite.*

Attorney—G. Akiyama, Counsellor at Law, No. 15, Uneme Cho, Kyobashi Ku, Tokyo.

In the case of the British steamship *Aphrodite* and her cargo, the following decision is given after due consideration:

Text of Decision.

The British steamship *Aphrodite* and her cargo, about five thousand six hundred tons of coal, are hereby adjudicated lawful prizes.

Facts and Reasonings.

The steamship *Aphrodite* of this case is the property of the petitioners, registered in London, England, and is a merchant ship flying the British flag. She took on board at Cardiff, England, about five thousand six hundred tons of double screened Cardiff coal, consigned by the petitioners, with the object of transporting the same to Vladivostock, Russia, and having obtained a bill of clearance and a bill of health with the statements "Consignee unto order," and "Destination Saigon," left the port of Cardiff on the 22nd of December, 1904. In her log-book, the name of Saigon was stated as her destination; and when she called at Singapore, she obtained clearance pretending to

be bound for Shanghai. From the date of leaving Singapore, on the 8th of the 2nd month of this year until the 20th of the same month, the log-book gave her destination as Shanghai, after which it was given as Vladivostock. Taking a roundabout route she shaped her course to Vladivostock through La Perouse Straits. During her voyage on the above route, she was captured by the Japanese man-of-war *Nippon Maru* in the vicinity of the Yetrup Channel on the 6th of the 3rd month of this year.

The above facts are proved by the written statement of Lieutenant D. Nakajima, representing the captain of the Japanese man-of-war *Nippon Maru*, by the affidavits of the same officer and of F. O. Edmands, Master of the steamship *Aphrodite*, by the certificate of the ship's nationality, the ship's log-book, the bill of lading, the bill of clearance, the bill of health, etc.

The main points of the petition are:

The transportation of coal by neutral subjects to Vladivostock, a port of a belligerent state, is public trade which neutral subjects are free to carry on, and is undoubtedly legitimate under International Law. Generally speaking, coal is not absolute contraband of war, hence when it is transported to such a port as Vladivostock which has two capacities, *i. e.*, commercial and naval, it is proper to regard the coal as transported to Vladivostock the commercial port and not intended for military use. The decision in the case of the *Neptunus*, captured during the Dutch-English War of 1798, will clearly show the correctness of the above view. Besides, goods like this cargo are not limited to military uses but they are widely consumed for industrial purposes. Even supposing that this cargo was enemy goods, being in transit to the enemy's territory, it was under the protection of a neutral flag and therefore, according to the Declaration of Paris of 1856, not liable to confiscation. The destination of this ship was Vladivostock, Russia, nevertheless, the name of that port was not mentioned in the bills of clearance obtained in the places of her departure and call, but the name of Saigon and Shanghai were given. However, it may be presumed that this was not from any evil intention to evade capture, for the bill of lading stated that the cargo was to be delivered to order at Vladivostock, and the log-book from the 21st of the 2nd month until the 2nd of the 3rd month of this year stated that this ship is bound for Vladivostock from Singapore. Moreover, very troublesome steps were necessary to obtain clearance for Vladivostock, so the real destination was concealed from the authorities merely in order to obtain clearance easily. The master's pencil writing over his signature on the bill of lading "Coal, the cargo, is on the owner's account until delivered to the Russian Navy," is quite

incomprehensible. He had no authority to make such writing, and it can have no effect even if he was in his normal senses in making it. Consequently, the owner should not be held responsible for the above act of the master. The master also stated that the cargo of this ship is the owner's property, but that statement was only his supposition, and it is evident that the owners of the cargo are Harris and Dixon Company of London. For the above reasons, judgment to release this ship, as well as her cargo, should be given.

After due consideration the Court concludes as follows:

Vladivostock is an important Russian naval port in the Orient and the base of her squadron; and it is a conspicuous fact that since the outbreak of the Russo-Japanese War, the Russian Government has made that place one of her bases of supplies, and has taken all means to accumulate there all sorts of war necessaries, and that ordinary trade has been almost suspended. Hence, when goods like coal, provisions, etc., which may be contraband of war according to circumstances, are transported to Vladivostock, they must be regarded as intended for military purposes, unless there is proof to the contrary. Moreover, the cargo of this ship being Cardiff coal of best selection which is used in the Orient solely by navies, was undoubtedly intended for military use, and consequently it may lawfully be regarded as contraband of war. The *Neptunus* case cited by the attorney for the petitioners is not a precedent for this case. On the contrary, the reason for the decision given in that case may be taken as a reason for inferring the cargo of this ship to be contraband of war. For the port of Amsterdam at that time was principally a commercial port, quite different from the present condition of Vladivostock. Brest mentioned in that decision rather resembled the present condition of Vladivostock. The fact that before her departure from Cardiff, Vladivostock had been definitely fixed as this ship's destination, and yet she obtained bills of clearance and of health from the Cardiff authorities under the pretence of going to Saigon, a neutral port, and also made the same false statement in her log-book; and the fact that she obtained at Singapore a bill of clearance for Shanghai, pretending to be bound for that port; and the fact that from her departure from Singapore on the 8th of the 2nd month of this year until the 20th of the same month, her log-book gave her destination as Shanghai, but instead of going towards Saigon or Shanghai, she intentionally took a roundabout route and shaped her course to Vladivostock through La Perouse Straits; these facts cannot be taken as excusable carelessness or as means resorted to for the purpose of obtaining facilities in navigation or in official procedures, but must be held as devices to conceal her real destination and to evade capture. The mere fact that the bill of lading

and a part of the log-book contained the statement of her real destination, is no ground for acquitting this ship from the charge of fraud. In short, the steamship *Aphrodite* transported contraband of war by false means. When a ship commits such fraudulent acts her confiscation, together with her contraband cargo, is allowed by the theory and usage of International Law. For the above reasons this ship as well as her cargo should be confiscated, and as to the other contentions of the petitioners there is no necessity of giving any explanation. The decision is therefore given as in the text.

Given this 4th day of the 5th month of the 38th year of Meiji at the Yokosuka Prize Court, the Public Procurator, S. Uchida, being present.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Aug. 31, 1905.

The following decision was given on the 6th of the 8th month of the 38th year of Meiji by the Higher Prize Court in the case of the British steamship *Aphrodite* and her cargo:

Case No. LXIV.

Decision.

Petitioners—The Cornhill Steamship Co., 81, Grace Church, London, England.

Representative—F. O. Edmands, Master of the Steamship *Aphrodite*.

Attorney—G. Akiyama, Counsellor at Law, 15, Uneme Cho, Kyobashi Ku, Tokyo.

In the case of the British steamship *Aphrodite* and her cargo, captured by the Japanese man-of-war *Nippon Maru*, near Yetrup Channel on the 6th of the 3rd month of the 38th year of Meiji, the Yokosuka Prize Court gave decision on the 4th of the 5th month of the 38th year of Meiji, confiscating the said ship and her cargo, about five thousand six hundred tons of Cardiff coal. Whereas, G. Akiyama, attorney of F. O. Edmands, the representative of the said petitioners, the Cornhill Steamship Co., has filed an appeal against the said decision, the case has been tried and the following decision is given, K. Tsuzuki and B. Ishiwatari, Public Procurators of the Higher Prize Court, taking part.

The main points and reasons of appeal stated by G. Akiyama, the attorney for the petitioners, are:

(1) As the cargo of this ship was transported to Vladivostock, the only Russian commercial port in the Orient, and intended for peaceful purposes, it is unreasonable to regard it as contraband of war. On the other hand, the ship, which carried the said cargo, belongs to a different person from the owner of the cargo, and there is nothing to prove that she took her cargo on board by false means, so she should not be confiscated, even though her cargo may be regarded as contraband of war.

(2) The punishment for carrying contraband of war is, as a rule, only to forfeit the contraband cargo, when it does not belong to the owner of the ship, and the ship merely suffers the loss of time, freight and expenses, but is not subject of confiscation. Even though contraband of war was loaded by fraudulent means, she is not liable to confiscation, unless there is proof that her owner colluded in the fraud. The above being a principle of modern International Law, is adhered to by England, and the Japanese Regulations Governing Captures at Sea are also founded on this principle. In the present case, there is nothing to show that the owner colluded in the fraudulent act, yet the original Court decreed her confiscation together with her cargo, regarding it as contraband of war, without investigating whether or not the owner was guilty of collusion. This decision is therefore unreasonable.

(3) The mere fact that the ship's final destination was not stated in the bill of clearance and the bill of health cannot be regarded as fraud sufficient to confiscate the ship. In order to prove that charge, the papers must be made out with evil intention of evading capture by a belligerent man-of-war, and they must be good enough for the purpose. In the present case, there is nothing to show that the ship's papers were prepared with the above intention. On the contrary, the absence of that intention may be seen by the statement of Vladivostock as her destination in the bill of lading, and the express statement, "bound for Vladivostock from Singapore," entered in her log-book from the 21st of the 2nd month to the 2nd of the 3rd month of this year. The omission of the name of Vladivostock as her destination in the bill of clearance or in the bill of health was merely in order to avoid troublesome procedures with the British authorities. Mr. Hall says that false ship's papers are objectionable only when they were made out for the purpose of deluding a belligerent captor and when the captor's right would be infringed if such papers were taken as true; and that in any other case such papers will be disregarded. According to this opinion, the papers of this ship cannot be

regarded as containing fraud sufficient to deserve the confiscation of the ship.

(4) According to the principle adopted in the Japanese Regulation Governing Captures at Sea, coal is regarded as contraband of war only when it is certainly intended for the military purposes of the enemy. Now granting this as in conformity with the fundamental principle of International Law, Vladivostock, the destination of this ship, is the only Russian commercial port as well as her only naval port in the Orient. Therefore it would be unreasonable to draw the hasty conclusion that coal, which is not absolute contraband of war, is intended for naval use, even when bound for that place. Such a cargo should be dealt with according to the precedent of the *Neptunus* case in the Dutch-English War of 1798 and be taken as consigned to Vladivostock, the commercial port, and intended for peaceful purposes. It is an error of the original Court, both in the recognition of fact and the application of precedent that it regarded Vladivostock as a purely naval port and compared that place to Brest, the naval port mentioned in the decision of the *Neptunus* case. Besides, the original Court ignored the fact that ordinary trade is still being carried on in Vladivostock, and it also held that Cardiff coal is chiefly used in the Orient by navies, notwithstanding the fact that this coal is consumed for industrial as well as military purposes both in the Occident and in the Orient. These conclusions were not founded on any proof and are therefore unreasonable.

(5) With regard to the disposal of conditional contraband of war in a neutral ship, the English usage is to confiscate the same on the payment of compensation, and according to the Continental principle decided by the Institute of International Law, the belligerent is only allowed to seize on giving compensation or to make prior purchase (pre-emption). It would be very harsh treatment, if Japan should confiscate goods unconditionally, without regard to the above mentioned principle and usage. The attorney for the petitioners therefore prays that due caution may be taken in dealing with conditional contraband, the property of neutrals, seeing that the Japanese prize regulations are founded on the English principle.

For the above reasons, the decision of the original Court should be cancelled and judgment given to release this ship and her cargo.

The main points of the response of Y. Kobayashi, Public Procurator of the Yokosuka Prize Court, are:

(1) That this ship is the property of the petitioners, the Cornhill Steamship Co., is an undisputed fact; and it may be presumed from the absence of any charter party and from the statements of the master and the bill of lading that the consignors of the cargo are

the same company. When the ship's owner is the consignor of her cargo, it is proper to hold that he is the owner of the cargo, unless proved otherwise. Moreover, the cargo of this case is double-screened Cardiff coal of best selection which is rarely used in the Orient except by navies, and its destination, Vladivostock, is the only naval base of the enemy in the Orient. If all these facts are considered, there is not the least doubt that this cargo was intended for the use of the enemy's navy. Besides, this ship obtained clearance, pretending, when leaving England, the destination of the cargo to be Saigon, and pretending it to be Shanghai when leaving Singapore; and she also made similar false statements in her log-book.

(2) The papers of this ship which contain the false statement about her destination are her log-book, bills of clearance and of health obtained in different ports. Moreover, this ship belongs to the same owner as the captured ship *Venus*, and the nature of her cargo, the place of her destination, as well as the false means taken by this ship, are exactly the same as the above-named ship. Hence it must be concluded that the false statement contained in the bills of clearance, etc., were made to the authorities by her owner or his representative, as was the case with the steamship *Venus*; and consequently there is no doubt that the owner was in collusion in all the fraud committed by this ship.

(3) A ship's bill of clearance and the bill of health are important papers which a captor must examine in order to ascertain her destination. There was fraud in those papers, and false statements were also made in this ship's log-book. Hence it is beyond any doubt that these false means were taken for the purpose of deceiving the captor.

(4) It is a conspicuous fact that double-screened Cardiff coal of best selection, the cargo of this ship, is rarely consumed in the Orient for any purpose other than naval, and Vladivostock is undoubtedly the enemy's naval base, even granting it is also a commercial port. Therefore this cargo cannot but be taken as intended for the use of the enemy's navy.

(5) It is admitted by modern International Law that a belligerent has the right to confiscate contraband goods, no matter if they can be used in peace as well as in war. Payment of compensation in confiscating conditional contraband of war is a matter of special treaty or special policy, and not yet entitled to observance as the rule of International Law. For the aforesaid reasons, the appeal is groundless, so it should be dismissed.

The reasons for the decision of the Higher Prize Court are given as follows:

(1) Vladivostock, being an important Russian naval port, it was a conspicuous fact that the Russian Government made it the base of her squadron from the outbreak of the Russo-Japanese War, and a depot, where arms, provisions, coal and other war material were abundantly accumulated, and that ordinary trade was almost suspended there. So it is not unreasonable that the original Court regarded the coal, consigned for Vladivostock, as contraband of war intended for the use of the Russian forces. Moreover, being Cardiff coal of best selection, which is of high cost in the Orient and rarely demanded except by navies in war time, it is beyond any doubt that this coal was intended for the Russian navy. The appellant argues that the precedent of the *Neptunus* case should be followed and this cargo be regarded as intended for peaceful purposes. But the nature of this cargo and the circumstances of its destination are entirely different from those in the *Neptunus* case, so it is needless to say that that case cannot be followed as a precedent.

(2) It is the established rule of International Law that all contraband of war is liable to confiscation. Pre-emption, confiscation with compensation, and seizure on condition of giving compensation as desired by the appellant, are matters of special treaty or special usage or nothing more than the doctrines of certain scholars, and not yet admitted as the rule of International Law. So the non-observance of such usage or doctrines by the original Court cannot be regarded as unlawful.

(3) When, as in this case, the object of a ship's voyage is the transportation of contraband of war, the ship may be confiscated according to International Law, and this Higher Prize Court deems that penalty reasonable. Besides, the whole cargo of this ship was contraband of war, and although the owner of this ship gave order to the master at the time of her departure to proceed to Vladivostock, a false destination was given in her log-book, bill of clearance, etc., that is to say, she transported contraband of war by false means.

For the reasons given, (1st, 2nd and 3rd), the decision of the original Court to confiscate this ship and her cargo is quite lawful, and as to the other points contended by the appellant, there is no need of giving any explanation.

The decision is therefore given as follows:

The appeal in this case is hereby dismissed.

Given this 8th of the 8th month of the 38th year of Meiji at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case II. *The Bawtry.*

Decision published in the *Official Gazette*, Tokyo, of Dec. 15, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 10th of the 7th month of the 38th year of Meiji, by the Sasebo Prize Court, in the case of the British steamship *Bawtry*.

Petition No. 1.

Decision.

Petitioner—The Imperial Steamship Co., L'm'd, 14, Cross St., Manchester, England. Sivewright, Bacon & Co., agents of the above.

Representative—W. C. Bacon, an Englishman.

Advocate—G. Akiyama, Counsellor at Law, 75, Yamashita Cho, Yokohama.

In the case of the British steamship *Bawtry*, the following decision has been given:

Text of the Decision.

The steamship *Bawtry* is hereby confiscated.

Facts and Grounds of the Decision.

The steamship *Bawtry* is the property of the Imperial Steamship Co., Ltd., the petitioner, and is a merchantman engaged in the transportation of goods, flying the British flag. The ship was chartered on the 15th of the 12th month of the 37th year of Meiji, at Shanghai, by Diederichsen, Jebsen & Co., and took in, at Hongkong and Kiaochau. materials for building and equipping vessels, railroad materials, provisions, drinks, etc., together with a large quantity of sundry goods. She left Kiaochau, on the 14th of the 1st month of the 38th year of Meiji, bound for Vladivostock, with bills of lading, manifest, etc., in which she pretended that her destination was Hakodate, with the object of evading capture by a Japanese man-of-war. While on her way to Vladivostock, her destination, on the 17th of the same month, she was captured by the Japanese man-of-war *Tokiwa*, in N. Lat. 34° 58′ and E. Long. 130° 38′, as engaged in the transportation of contraband of war.

The above facts are clear from the statement, submitted by Lieutenant Y. Torisaki, representative of the captain of the *Tokiwa*; from the testimony given by Harry Ratcliff Shotton, Master of the steamship *Bawtry* and Otto Meyer, supercargo; and from the certificate of

the ship's nationality, the deck journal, the charter party, the bills of lading, the manifest, etc.

The purport of the plea of the petitioner's advocate is as follows:

The ship was chartered by Diederichsen, Jebsen & Co., and undertook to transport a cargo to Vladivostock. That cargo was not the property of the owner, and if there were contraband goods on board, the ship should not be punished with confiscation, unless there is proof that the owner shipped them by fraudulent means. Moreover, the entry, in some of the ship's papers, of Hakodate as the port of destination, was the act of the master or of the consignor, and as the owner took no part in it, it is not responsible. The advocate, therefore, requests that the steamship be released.

The gist of the opinion of the Public Procurator is as follows:

The ship under consideration undertook the transportation of contraband of war, stating a false destination, with the object of evading capture by a Japanese man-of-war. Assuming that the deceit was the act of the master, the owner cannot escape responsibility, for the master undertook the business as his representative. The ship should, therefore, be confiscated.

After due consideration the Court concludes as follows:

The penalty for transportation of contraband of war is limited in ordinary cases to the confiscation of the cargo, but when fraudulent means are used, in order to evade capture by a belligerent, the ship is forfeited, together with the cargo. This is generally recognised in the rules and usage of International Law. The steamship *Bawtry* attempted to import into Vladivostock, a Russian naval base, materials for building and equipping ships, provisions, drinks, railroad materials, etc.; and from the fact that she stated her destination as Hakodate, it is very clear that she undertook the transportation of contraband of war by fraudulent means. And if fraudulent means are used in the transportation of contraband of war, the ship is liable to confiscation, whether the contraband goods are the property of the owner of the ship or not, and whether the owner himself loaded the ship with the goods by fraudulent means or not. Again, the petitioner's advocate argues that, as the deceit was the act of the master or the consignor, in which the owner took no part, the owner is not responsible for it. But the statement of a false destination in the bills of lading, the manifest, etc., was, from the nature of the case, and from the master's confession, clearly the act of the master. And if it was the act of the master, the owner, whose representative the master is, must be responsible for it. Therefore, the decision as stated in the text, has been given.

Given this 10th day of the 7th month of the 38th year of Meiji,

at the Sasebo Prize Court, the Public Procurator, S. Yamamoto, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Dec. 16, 1905.

The following decision was given, on the 30th of the 11th month of the 38th year of Meiji, by the Higher Prize Court, in the case of the British steamship *Bawtry*.

Case No. LXXXIII.

Decision.

Petitioner—The Imperial Steamship Co., Ltd., 14, Cross Str., Manchester, England. Sivewright, Bacon & Co., Agents of the above.

Representative—W. C. Bacon.

Advocate—G. Akiyama, Counsellor at Law, 75, Yamashita Cho, Yokohama.

A protest has been filed by G. Akiyama, advocate of W. C. Bacon, representative of the petitioners, the Imperial Steamship Co., L'm'd, against the decision of the Sasebo Prize Court, given on the 10th of the 7th month of the 38th year of Meiji, in the case of the British steamship *Bawtry*, which was captured by the Japanese man-of-war *Tokiwa*, on the 17th of the 1st month of the 38th year of Meiji, in N. Lat. 34° 58′ and E. Long. 130′ 28°. The original decision condemned the ship. The protest has been tried before this Court, Public Procurators K. Tsuzuki and B. Ishiwatari taking part.

The purport of the protest filed by the petitioners' advocate, G. Akiyama, is as follows:

(1) The original Court has inflicted the punishment of confiscation upon the ship, as having taken on board contraband of war by fraudulent means. On examining the act which was regarded by the original Court as fraudulent, the decision says that in the bills of lading and the manifest, the destination of the ship was falsely stated as Hakodate, no mention being made of Vladivostock, the real destination, and that this was the fraudulent means contrived to evade capture by Japanese men-of-war. But in order to confiscate a ship, as guilty of fraud, there must be collusion between the owner and the shipper in contriving to delude a captor and to transport contraband of war; and the means used must be calculated to achieve the object. In the case under consideration, the owner chartered the vessel at

Shanghai to Diederichsen, Jebsen & Co., to be employed for the transportation of sundry goods to Vladivostock, which fact is clear from the charter party. In the bills of lading and manifest, the ship's destination was stated as Hakodate instead of Vladivostock. But it is very clear from various records regarding this case, that those documents were prepared by the master and the charterer or the shippers, and the owner had no part in the deceit. It is true, that the master is always considered as the representative of the owner, but as has been argued by Grotius and other great scholars and as is recognised in modern International Law, the owner should not be held responsible for such unlawful and arbitrary acts of the master as in this case. And were it admitted that the owner was responsible for this act of the master, the ship's destination to Vladivostock was clearly stated in the charter party, and the false statements in the bills of lading and the manifest were not calculated to evade capture. Consequently, the ship cannot be said to be guilty of fraud.

(2) The goods on board this ship were not absolutely contraband, but contraband only if intended for the enemy's military use. The original Court considered these goods contraband, on the ground that they were destined to Vladivostock, a base of the Russian navy. Vladivostock is a Russian naval port, but at the same time it is the only Russian commercial port in the East. In case any goods, such as those under consideration, which are useful both in peace and in war, are in transit to a port like Vladivostock, it is more proper, under International Law, to consider them as destined to Vladivostock the commercial port and intended for peaceful purposes. The ship should, therefore, be released.

The gist of the answer of C. Minakami and S. Yamamoto, Public Procurators of the Sasebo Prize Court, to the above protest, is as follows:

In case a neutral vessel transports contraband of war, a belligerent may seize the vessel, and confiscate the contraband goods and all non-contraband goods belonging to the same owner as the contraband goods; and when the vessel carries false papers or gives a false destination or it is the property of the owner of the contraband goods, the penalty of confiscation extends to the vessel. This is the principle, recognised alike in the theory and precedents of International Law. In the case under consideration, over one-half of the goods were shipped by the charterers, Diederichsen, Jebsen & Co., who, in order to evade capture by Japanese men-of-war, colluded with the master, and in the bills of lading and manifest, falsified the destination as Hakodate. This is very clear, and as a means of deceit it must be considered to be of the gravest nature. Now, according to law, the owner is re-

sponsible for the acts of the master. In the case under consideration, the master's attempt to evade capture by Japanese men-of-war was made for the benefit of the owner, and the owner cannot, of course, escape responsibility, on the ground that he gave no such special orders to the master. Again, Vladivostock, at present, is quite different in its conditions from Amsterdam of the time of the Dutch-English War. Since the outbreak of the Japanese-Russian War and especially since the fall of Port Arthur, Vladivostock has lost all the characteristics of a commercial port. Concerning this, the master states that he understands Vladivostock to be at present an important depot for the Russian Army and Navy. Moreover, Diederichsen, Jebsen & Co., the charterers of this ship, had once attempted to run the blockade of Port Arthur with the steamship *Veteran*, and it is very clear that the firm attempted this time to make a large profit by transporting contraband of war. The original Court was, therefore, right in confiscating the ship, and the Public Procurators think that this protest should be rejected.

The decision of this Court is explained as follows:

(1) Since the destination of this ship was Vladivostock, the arms and materials for building and equipping ships on board are clearly contraband of war. Moreover, Vladivostock is an important Russian naval port. Since the outbreak of this war, Russia has made it not only the base of her squadron, but also a depot where she has been collecting arms, provisions, coal, and other warlike stores, and trade there has been almost suspended. This is a conspicuous fact, and consequently, provisions, railroad materials, etc., on board this ship, must be considered contraband of war, being intended for Russian military use. The advocate argues that the cargo of this ship, following the precedent of the *Neptunus* case, should be regarded as intended for peaceful purposes. But that case cannot be taken as a precedent, either for the absolutely contraband goods mentioned above, or for the conditionally contraband goods, because the *Neptunus* case is quite different from this case, in the conditions of the place of destination.

(2) When the object of a ship, as in this case, is the transportation of contraband of war, the ship is liable to confiscation. This is recognised in International Law, and this Court considers it to be fair and just. For stronger reason, this ship is liable to confiscation, because, notwithstanding that her voyage to Vladivostock was fixed before she left Shanghai, the false destination of Hakodate was mentioned in the bills of lading and manifest, that is to say, she engaged in the transportation of contraband of war, using fraudulent means.

As has been explained in (1) and (2) the original Court was right

in confiscating this ship, and the protest has no ground. The decision of this Court is therefore as follows:

This protest is hereby rejected.

Given this 30th day of the 11th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case III. *The M. S. Dollar.*

Published in the *Official Gazette*, Tokyo, on Sept. 11, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 28th day of the 4th month in the 38th year of Meiji, by the Yokosuka Prize Court in the case of the British steamship *M. S. Dollar.*

No. V., 2.

Decision.

Petitioner—The M. S. Dollar Co., Ltd., Victoria, British Columbia.

Representative—Robert Dollar, President.

Advocate—G. Akiyama, Counsellor at Law, 15, Uneme Cho, Kyobashi Ku, Tokyo.

In the case of the British steamship *M. S. Dollar*, trial has been held and the following decision given:

Text of the Decision.

The British steamship *M. S. Dollar* is hereby confiscated.

Facts and Grounds of the Decision.

The steamship *M. S. Dollar* is the property of the petitioner, and is a merchant ship, registered at Victoria, British Columbia, flying the British flag. According to the charter party entered into at San Francisco, North America, on the 8th of December, 1904, between the M. S. Dollar Steamship Co., agent of the petitioner, and Harry J. Hart of San Francisco, the ship took in a cargo of fodder (about 26,200 bundles of hay, about 14,600 bags of barley and about 32,200 bags of oats) with the object of transporting it to Vladivostock. In her papers, Moji was put down as her destination, and in the bill of lading, the consignee was stated as "To order." The ship left San Francisco on the 31st of the same month, passed the Mushiri Channel and steered for the Strait of Soya. But being obstructed by float-

ing ice, she passed the Boussole Channel and took the route to Vladivostock via the Strait of Tsugaru. In order to hide her course, however, statements were made in the official log, ship's log and engineer's log as if she had made for the Strait of Tsugaru, direct from San Francisco. While she was thus pursuing her course for Vladivostock, on the 27th day of the 1st month of the 38th year of Meiji, she was captured by the Japanese man-of-war *Asama* near the Cape of Tappi.

The above facts are clear from the statement submitted by Lieutenant U. Ogura, representative of the captain of the *Asama*; from the testimony given by the same officer, by Charles Cross (?), master, and others of the *M. S. Dollar*, and by witnesses Edward Clarence Davis and R. Stanley Dollar; from the certificate of the ship's nationality, the charter party, the bill of lading, the manifest, the clearance from San Francisco, the bill of health, the official log, the ship's log, the engineer's log, and the real ship's log which the master produced after he had confessed the concealment of the ship's course, and from the statement of the petitioner's advocate.

The purport of the petition is as follows:

The petitioner let the ship to the charterer to transport a cargo to Moji, according to the charter party, and her steering for a port not stated in the charter party as her destination was the act of the charterer, of which the owner had no knowledge. Moreover, the cargo is not the property of the owner of the ship. So that the ship ought not to be confiscated together with the cargo, even if the latter is contraband of war. It is true that the ship's papers are not perfect, as no mention is made in them of Vladivostock, a port of call; but such omission cannot be considered a contrivance to evade capture. And were it admitted that it was such a contrivance, the ship should not be compromised, as it was the act of the charterer to secure the cargo, his property, from capture while the owner of the ship had no knowledge of it. Moreover, the cargo is not absolute contraband, and in case such goods are in transit to a place like Vladivostock, which is a commercial as well as a naval port, it is more proper to consider them as destined to Vladivostock, the commercial port, and not intended for military use, unless there is proof to the contrary. This is very clear form the case of the *Neptunus*, captured in the Dutch-English War of 1798. Moreover, fodder, of which this cargo was composed, is not restricted to military use. The petitioner, therefore, requests that the ship be released.

After due consideration, the Court concludes as follows:

Vladivostock is an important Russian naval port in the East and is actually the base of a Russian squadron. Since the outbreak of the Russo-Japanese War, the Russian Government has made it a depot,

where they have been devoting their whole energy to collecting military stores, while ordinary trade is virtually stopped there. These being conspicuous facts, when any goods like fodder, the cargo of this ship, which become contraband of war according to circumstances, are destined to Vladivostock, it is more proper to consider them as intended for military use, unless there is strong proof to the contrary. As to the *Neptunus* case cited by the advocate, it is not applicable to this ship, but, on the contrary, may be cited as a precedent for condemning the cargo as contraband of war; because, unlike Vladivostock, Amsterdam at that time was chiefly a commercial port, while on the other hand Brest, mentioned in the same case, resembles the Russian Asiatic port in many respects. It becomes still clearer that this cargo was intended for the enemy's military use and is consequently contraband of war, if we take into consideration the quantity of goods and the fact that fraudulent means were used to transport them, together with the statements made by the master. As has been stated, it is clear from the testimony given by the master and other members of the crew that Vladivostock was the port of destination. Moreover, the circumstances that made the ship change her course when she had arrived at the north of Kunashiri Island on the 23rd of the 1st month, being obstructed by floating ice, and other events are faithfully stated in the real ship's log. Notwithstanding this, in her papers produced at the time of capture, Moji is mentioned as the port of destination, and in the official log, ship's log and engineer's log, the course of the ship is hidden and a statement is made that she had made for the Strait of Tsugaru direct from San Francisco. Further, the master and other members of the crew did not tell the real facts when the representative of the captain of the *Asama* visited the ship, and when the counsellor in charge of the case first examined them, but confessed only after they had been examined several times. These facts are sufficient to infer that they deliberately laid out a scheme to evade capture. In a word, the *M. S. Dollar* attempted to transport contraband of war, using fraudulent means. And when fraudulent means are used, the ship is liable to confiscation together with the contraband cargo, no matter whether the owner of the ship colluded in the fraud or not. On the above ground, this ship is confiscable, and the decision, as stated in the text, has been given. As to other points argued by the advocate, there is no need to give explanation.

Given this 28th day of the 4th month of the 38th year of Meiji, at the Yokosuka Prize Court, Y. Kobayashi, Public Procurator of the Yokosuka Prize Court, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Sept. 12, 1905.

The following decision was given by the Higher Prize Court on the 26th day of the 8th month in the case of the British steamer *M. S. Dollar.*

No. XLVII.

Decision.

Petitioner—The M. S. Dollar Co., Ltd., Victoria, British Columbia.

Representative—Robert Dollar.

Advocate—G. Akiyama, Counsellor at Law, 15, Uneme Cho, Kyobashi Ku, Tokyo.

A protest has been filed by G. Akiyama, advocate of Robert Dollar, representative of the petitioner, the M. S. Dollar Co., against the decision of the Yokosuka Prize Court given on the 20th of the 4th month of the 38th year of Meiji, in the case of the British steamship *M. S. Dollar*, which was captured by the Japanese man-of-war *Asama*, on the 27th of the 1st month of the 38th year of Meiji, in the neighbourhood of Cape Tappi. The original decision condemned the ship. The protest has been tried before this Court, the Public Procurators, K. Tsuzuki and B. Ishiwatari, taking part.

The purport of the protest filed by G. Akiyama, petitioner's advocate, is as follows:

The decision of the Yokosuka Prize Court, condemning the steamship *M. S. Dollar*, is unreasonable and the petitioner requests that the original decision be overruled and a new decision releasing the ship be given. As the grounds of the protest the petitioner's advocate states:

(1) The owner of the ship is a different person from that of the cargo. Moreover, the ship did not take in the cargo by deceitful means. So that, even if the cargo be considered contraband of war, the ship should not be punished together with it.

(2) The only reason the original Court condemned the ship is that she attempted to transport contraband of war using deceitful means, and that when deceitful means are used, the ship is liable to confiscation together with the contraband cargo, no matter whether the owner of the ship colluded in the fraud or not. But according to modern International Law, if the contraband cargo is not the property of the owner of the ship, the penalty for transporting contraband is

limited to the confiscation of the cargo, and no punishment is inflicted upon the ship, except the loss of time, freight and expenses. And even in the case of deceitful means being used in transporting contraband, the ship is not liable to confiscation together with the cargo, unless it is clearly proved that the owner of the ship colluded in the fraud. This principle is adopted by England, and is also followed in the Japanese Regulations Governing Captures at Sea. Consequently, in condemning a ship for carrying contraband of war by deceitful means, the owner must have participated in the fraud, that is, collusion must be proved. Now, in the case under consideration, is there any fact justifying the assumption that the owner colluded in the fraud? There is none. The original Court did not ascertain the fact, but ruled that the ship is confiscable together with the cargo, no matter whether the owner colluded in the fraud or not. The original decision is, therefore, unlawful.

(3) The omission of the place of destination in the ship's papers is not sufficient to constitute deceitful means justifying the confiscation of the ship. In order to justify such penalty, there must be evil intention to deceive the officers of a belligerent man-of-war who visit and search the ship, and the means used must be good enough to deceive. In the case of this ship, there is no ground for inferring that her papers were prepared with such evil intention. Moreover, it is very clear that the irregularities in the papers are not calculated to accomplish the object of evading capture. The ship should not, therefore, be confiscated.

(4) The owner let the ship to the consignor to be employed for the transportation of barley, oats and hay. The port of destination was agreed on as Moji, Japan, and the charter party was concluded with that understanding. The ship's voyage to a place other than that port was not, therefore, expected by the owner. Concerning its nature and force, the charter party should be construed under the British Law, as it was concluded in British dominions. Now, according to British Law, a charter party has the nature of a contract of hire, and the possession and supervision of the ship temporarily passes to the charterer. But waiving this construction and considering it a common contract of transportation, even then, it is very clear that the intention of the owner was not other than the route mentioned in the charter party. So that he cannot be said to have colluded in the transportation of contraband of war, if the charterer gave secret orders to the master and the master carried them into effect. Again, according to the principles of ordinary law, the master of a ship is the representative of the owner, but it is clear that the owner is not responsible for any arbitrary conduct of the master beyond the scope of the authority commonly

delegated to him. For a stronger reason, the owner is not responsible for such an act as the transportation of contraband of war by deceitful means, which is an offence against International Law. For the above reasons, the owner is not responsible for any statements in ship's papers other than the charter party, nor even for any false statement made in that document, unless there is proof that he was a party to the fraud.

(5) The Japanese Regulations Governing Captures at Sea consider barley, oats and hay as contraband of war, only when they are clearly intended for the enemy's military use. Supposing this rule to be in conformity with the principle of International Law, it is unreasonable to consider the goods under consideration, which are not absolute contraband, as intended for military uses merely on account of their being consigned to Vladivostock. Because Vladivostock is Russia's only commercial as well as her only naval port in the East, and the goods should, therefore, be considered, according to the precedent of the *Neptunus* captured during the Dutch-English War of 1798, as consigned to Vladivostock, the commercial port, and not as intended for military uses. The cargo is not, therefore, contraband of war, and the ship which carried it should not be confiscated.

The gist of the answer of Y. Kobayashi, Public Procurator of the Yokosuka Prize Court, to the above protest, is as follows:

(1) The ship in transporting a full cargo of fodder to Vladivostock, an important Russian depot where the enemy has been accumulating military stores, stated the destination of the goods as Moji in the manifest, the charter party, the bill of lading, the clearance, etc. In the official log, the ship's log, the engineer's log, etc., the fact of the ship's having steered for the Strait of Soya, passing the Kurile Islands, is not mentioned, but statements are made as if she had steered straight for the Strait of Tsugaru after leaving port. Moreover, the ship hid the log-book. These being evident facts, the original decision, which condemned the ship on the ground of her being engaged in the transportation of contraband of war using deceitful means, is just.

(2) The original Court ruled the ship confiscable because in the charter party and other important papers false statements were made of important items, such as the destination of the contraband goods, etc. This is clear from the decision. Now, a charter party being a contract concluded between an owner and a charterer, there can be no doubt that the owner in this case participated in the fraud. There is no need, therefore, to discuss whether or not proof of the owner's collusion is necessary to justify confiscation of the ship on the ground of fraud.

(3) In the charter party, the bill of lading, etc., the destination of the cargo is put down as Moji. On examining the official log, the ship's log, etc., to ascertain the correctness of the former papers, statements are made as if the ship had steered the ordinary route to Moji. If these records concerning navigation are correct, then the former papers must be considered as correct, and there is nothing to do but to give a decision releasing the ship with her cargo. But the falsehood of these records become evident from the confession of the master and from the ship's log which he had hidden. The original decision which condemned the ship on the ground that there were false statements in these important papers is, therefore, just.

(4) A charter party is not a contract of hire and, consequently, the master is not under obligation to obey the order of the charterer. And in the case under consideration, there is no proof of the petitioner's statement that the master, disregarding the orders of the owner, attempted to proceed to Vladivostock, instead of Moji, in accordance with the direction of the charterer.

For the above reasons, the Public Procurator considers that this protest should be rejected.

The decision of this Court is explained as follows:

(1) Vladivostock is an important Russian naval port. Since the outbreak of the Russo-Japanese War, Russia has made it not only the base of her fleet, but also a depot where she has been accumulating arms, provisions, coal, and other military stores; and ordinary trade there is almost stopped. These are conspicuous facts. Moreover, considering the quantity of the barley, oats and hay on board the ship, the attempt to pass the Strait of Soya, the most dangerous route, and the deceitful means which she had used, it is very clear that the goods were intended as fodder for the Russian military forces. The original Court is not, therefore, unjust in considering the goods contraband of war. The advocate argues that the goods should be considered as intended for peaceful purposes, following the precedent of the *Neptunus* case. But the *Neptunus* case and the case under consideration are quite different in the circumstances of the place of destination and, of course, that case cannot be taken as a precedent.

(2) Any vessel, the object of whose voyage is the transportation of contraband of war, like the ship under consideration, is liable to confiscation. This is recognised in International Law and this Court considers it to be reasonable. Moreover, the whole of the cargo on board the ship is contraband of war, and notwithstanding that her destination to Vladivostock was agreed upon at the time of her departure form San Francisco, a false destination is mentioned in the

charter party and other papers. That is to say, she transported contraband of war using deceitful means.

For the reasons explained in (1) and (2), the original decision which confiscated the ship is just, and as to the other points of protest no explanation is needed.

The decision given is, therefore, as follows:

This protest is hereby rejected.

Given this 20th day of the 6th month of the 38th year of Meiji, at the Higher Public Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case IV. *The Henry Bolckow.*

Published in the *Official Gazette*, Tokyo, on Dec. 21, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 28th of the 6th month of the 38th year of Meiji, by the Yokosuka Prize Court in the case of the Norwegian steamship *Henry Bolckow*.

No. XX.–1.

Decision.

Petitioner—Otta Walaas, Hittels St., Flekkefjord, Norway.
Attorney—G. Akiyama, Counsellor at Law, 15, Uneme Cho, Kyobashi Ku, Tokyo.

In the case of the Norwegian steamship *Henry Bolckow*, the following decision is given after due examination:

Text of Decision.

The Norwegian steamship *Henry Bolckow* is hereby confiscated.

Facts and Reasoning.

The steamship *Henry Bolckow* is a merchant ship, registered in Tensberg, Norway, and entitled to sail under the Norwegian flag for six months, reckoning from the 20th day of the 10th month of the 37th year of Meiji. On the 17th of the 3rd month in the 38th year of Meiji, the petitioner, as the master of this ship, received on board about 18,190 sacks of American flour from the consignors, Melchers & Co., at Shanghai, China, with the object of transporting it to Korsakoff, Sakhalin, Russia, but in order to conceal her destination she obtained clearance from the Shanghai Customs, pretending to be bound for Hongkong, and also got a certificate written on her crew list, by the Norwegian Consul at Shanghai, to the effect that her destination

was Hongkong. Being instructed by Melchers & Co. to transport the said cargo promptly and to shape her course to the east of Japan, she weighed anchor at Shanghai at about 1 p.m. on the 18th of the same month, and, without calling at Hongkong, took a southeast course, and after passing Tori Shima (Ponafiden Island) and Yamome Iwa (Lot's Wife) through the north of Oki-no-Erabu, proceeded northeast. Approaching Hokkaido in the early part of April, she tried several times to pass Boussole Channel, northeast of Urrup Island, but being prevented each time by floating ice, stood to the southward, and while sailing with the intention of passing Yetorup Strait, she was discovered by the Japanese man-of-war *Kumano Maru*, at about 2 p.m. on the 7th of the same month, in N. Lat. 45° 10′ and E. Long. 149° 29′ and captured as a ship carrying provisions intended for the enemy's military use. At the time of capture she had a copy of an imperfect bill of lading, but had no clearance nor manifest. She had frequently neglected to carry her running lights, violating navigation rules, when she approached Japan.

The above facts are proved by the written statement of Sub-Lieutenant S. Toriyama, representing the captain of the Japanese man-of-war *Kumano Maru*, by the affidavits of Otta Walaas, the master, A. Amusen, first mate, S. Lee, chief engineer, Chuanchengsheng, boatswain, Changhsiangyuan, Changhsiaolin, quartermasters, Asbeng Asan, Achuan, sailors, all of the steamship *Henry Bolckow*, and of the said S. Toriyama, and by the telegraphic answer of the Vice Minister of Foreign Affairs, the ship's log-book, the certificate of the ship's nationality, the provisional certificate of nationality, a letter to the master from Melchers & Co., a telegram attached to the letter, and the crew list.

The main points of the petition are:

The petitioner is the owner as well as the master of the ship under consideration. This ship took on board about 18,190 sacks of American flour on the 17th of the 3rd month of this year, at the request of Melchers & Co. at Shanghai, and while sailing for Korsakoff, Sakhalin, with the object of transporting the cargo there, she was captured by the Japanese man-of-war *Kumano Maru* on the 7th of the 4th month in the same year, in the vicinity of Yetorup Channel. But the cargo was bought and shipped by the said Melchers & Co. at the request of the Det Ostasiatick Co. of Copenhagen, to be transported for the rescue of the starving people at Korsakoff, Sakhalin, and not for military use. Hence this ship cannot be held as engaged in the transportation of contraband of war. The statement of Hongkong as her destination in the crew list was for the purpose of concealing from the crew that she was bound for Korsakoff, and that this statement was

not made in order to evade capture is proved by the fact that the destination of Korsakoff was mentioned in the bill of lading. As the foregoing shows, this ship committed no act justifying confiscation, so she should be released.

After due consideration the Court concludes as follows:

The petitioner contends that the American flour, the cargo of this ship, was to be transported to Korsakoff for the starving people there, but he denies any knowledge as to who the starving people were. In the letter from Melchers & Co. to the master, it is stated that the cargo was to be supplied to the starving people at Korsakoff, Sakhalin, and not to any other place than Sakhalin, and that the correctness of the above statement would be certified by the consul; but the consul must have been unable to give such a certificate, considering that he had actually mentioned in the crew list that the ship was bound for Hongkong. Moreover, in the said letter, the "starving people" are underlined which shows that the above statement was purposely made as a plausible reason to escape capture, and, therefore, it cannot be taken as a true statement. Besides, although there was ample time for giving evidence as to who the consignee was, no proof was produced on this point, nor was there any trustworthy proof of the statement that the cargo was intended for the starving people. On the other hand, the port of Korsakoff being an important defensive place in the southern part of Sakhalin Island, the strength of the garrison has been increased since the outbreak of the Russo-Japanese War, and the volunteer system has also been established; and on the 31st day of March, 1904, Russian calendar, the Viceroy of the Far East issued a special ordinance to encourage volunteers, and stipulated that exiles, who would become volunteers, would enjoy mitigation of their punishments. As the result of the above steps, the military force at Korsakoff has of late been immensely augmented. Some part of the civil residents of the place, whose number was very small even in time of peace, have removed, since the war, to other places, expecting the attack of the Japanese army; while the other part have enlisted as volunteers, and now it is a fact that only a very small portion of them remain there. Although Korsakoff was definitely fixed for the ship's destination at her departure from Shanghai, clearance was obtained from the Custom House under the pretence that she was bound for Hongkong; and a statement of false destination in the crew's list was obtained from the Norwegian Consul, under the same pretence. Although instructed to transport the cargo speedily, she did not take the nearest route, but tried to pass Boussole Channel or Yetorup Straits for way through the Pacific Ocean, and when prevented by floating ice, still strove to navigate the difficult passage. And this ship, in vio-

lation of the rules, when approaching the territory of Japan, failed to carry running lights. These acts cannot be anything but means taken to evade capture by the Japanese Navy. It is evident, when the above facts are taken into consideration, that the cargo of this ship was not for ordinary trade nor to be supplied to starving people, but was transported for the military use of the enemy. Hence it is lawful to regard the cargo as contraband of war. As the foregoing shows, this ship obtained clearance by making a false statement of destination; she purposely took a roundabout route with a false statement of her course in the crew's list; she failed to carry lights, in violation of the rules; and she was not provided with bill of clearance or manifest. In short, she transported contraband of war by false means. Both the theory and usage of International Law allow that such a ship should be confiscated.

For the above reasons, this ship is liable to confiscation, and as to the other points contended by the petitioner, no explanation is necessary.

The decision is therefore given as in the text.

Given this 28th day of the 6th month of the 38th year of Meiji, at Yokosuka Prize Court, Y. Kobayashi, Public Procurator of the Yokosuka Prize Court, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Yokosuka Prize Court.

Case V. *The Lydia.*

Decision published in the *Official Gazette*, Tokyo, of March 3, 1906.

Decision of the Sasebo Prize Court.

The following decision was given on the 18th day of the 10th month of the 36th year of Meiji, by the Sasebo Prize Court in the case of the German steamship *Lydia*:

Decision.

Petition No. 1.

Petitioners—Theodor and F. Eimbecke, Hamburg, Germany.

Petitioner—H. Wilhelm Dieckmann, jr.

Representative—R. Richter, Master of the *Lydia;* Buergermeister Schmidtstrasse, Bremerhaven, Germany.

Attorney—T. Ishibashi, Counsellor at Law, 41, Togiya Machi, Nagasaki.

In the case of the German steamship *Lydia*, decision is given as follows:

Text of Decision.

The steamship *Lydia* is hereby confiscated.

Facts and Reasons.

The steamship *Lydia*, owned jointly by the petitioners, Theodor and F. Eimbecke and H. Wilhelm Dieckmann, jr., is a merchant ship under the German flag, engaged in the transportation of goods. She was chartered by H. Wilhelm Dieckmann, jr., one of the owners, and took on board at Hamburg, Germany, machine oil, cylinder oil, wheel pitch, madia pitch, acetic acid, oil cans, washers, belting iron, leather belts, emery, hemp ropes, table salt and salt, for the purpose of transporting them to Nicolaievsk, Russia. The manifest and bill of lading were prepared in two different forms, one giving the destination as Hongkong, the other Nicolaievsk. Having the documents with the name of Hongkong only, in order to show that the ship was bound for that port, she started from Hamburg on the 8th day of the 4th month of the 36th year of Meiji. She arrived at Hongkong on the 4th of the 6th month of the same year, and received there the manifest and bill of lading, giving Nicolaievsk as the destination, which had been sent by mail from her owners. Leaving Hongkong for Nicolaievsk on the 9th of the 7th month in the same year, she took a roundabout course, east of Formosa and south of Loochoo. On the 16th of the same month, she encountered a typhoon, her steering gear was broken and she drifted from the 17th. She made a jury tiller on the 20th and tried to reach port at Nagasaki. But not being well under control, she determined to find shelter at Shanghai, and when she got near the main island of Loochoo on the 23rd in changing course, her tiller was again broken and she could not move any more. So she gave up the idea of going to Shanghai, and asked for help of the signal station on Kiyamu Cape in Loochoo. Finally she put into port Naha with the assistance of the Japanese merchantman *Futami Maru*, and was captured as a contraband carrier by the Japanese man-of-war *Nippon Maru*, on the 26th of the same month (July, 1905) while at anchor there.

The above facts are proved by the written statement of H. Narikawa, Captain of the *Nippon Maru*, by the affidavit of R. Richter, master, Franz Bolmann, first mate, Hans Ostermann, second mate, all of the *Lydia*, by the certificate of the ship's nationality, the manifest, the bill of lading, the ship's log, the charter party, and the bill of health.

The main points of the statement of the attorney for the petitioners are as follows:

(1) This ship was not captured on her voyage to Nicolaievsk, but while at anchor at Naha Port having applied for help at the signal station in Kiyamu Cape, Loochoo, after having given up the idea of going to Nicolaievsk and having steamed back about 250 miles in the direction of Shanghai. Therefore, even supposing she had engaged in prohibited carriage by sea, her original object was changed and given up, so she is not liable to confiscation.

(2) In order to decide according to International Law, whether or not a voyage is objectionable, the actual facts and circumstances must be taken for the grounds of judgment, and it is unlawful to make conclusions on a presumption of the future and uncertain facts, such as to say that this ship might renew her voyage once given up, when she completed repairs. Even granting that the presumption is lawful, it would be about the 15th of the 10th month of this year before she could be repaired and made seaworthy at Shanghai; and as the sea would be ice bound by that time, she would not be able to attempt the voyage to Nicolaievsk before the 4th month of the next year. The peace treaty between Japan and Russia has now been signed, and the exchange of ratifications is nearly settled. Needless to say that the confiscation of this ship at such a time, and on a presumption of a future and uncertain fact which may take place after the 4th month of next year, is unreasonable.

(3) Even supposing the contentions (1) and (2) are groundless, the cargo of this ship consists mostly of agricultural goods, and contains no contraband of war, so it should not be confiscated. The ship should also be exempt from confiscation.

(4) There are some goods among the cargo which the Japanese Government may deem contraband of war, but they were loaded by carelessness and not with any evil intention. Moreover, this ship belongs to a different party from her cargo. Hence, the contraband goods may be subjected to confiscation, but the ship and non-contraband cargo should not be confiscated. For the above reason, this ship should be released.

The main points of the opinion of the Public Procurator are:

Of the cargo of the ship, certain goods such as belting iron, machine oil, leather belts and table salt are contraband of war, because they are consigned to Nicolaievsk, and this ship took false means in the transportation of the contraband goods. Besides, this ship and her cargo belong to the same owner. Hence, she should be confiscated.

After due consideration, the Court concludes as follows:

It is admitted, both by the rules and usages of International Law, that a ship carrying contraband of war by false means, is liable to confiscation. Of the cargo of this ship, certain goods, such as machine

oil, cylinder oil, wheel pitch, madia pitch, acetic acid, oil cans, washers, belting iron, leather belts, emery and hemp rope, are materials for building or equipping ships, and table salt and salt are provisions. Their destination, Nicolaievsk, is an important coast fortress, guarding the Russian littoral provinces conjointly with Vladivostock, and it is a fact that since the seaward communications of Vladivostock have been cut off by the Japanese Squadron, since the 5th and 7th month of this year, Nicolaievsk has become the chief gateway for the importation of war materials. Therefore, the above goods are undoubtedly contraband of war, intended for the military use of the enemy. Besides, notwithstanding that her destination to Nicolaievsk was decided on when she left Hamburg, she sailed for Hongkong with a manifest and a bill of lading in which the name of Hongkong was given as her destination. The above steps were taken for the purpose of evading capture by the Japanese squadron, which was cruising between Singapore and Hongkong at that time. In other words, she transported contraband of war by false means, and consequently is liable to confiscation. The attorney for the petitioners contends that she had given up her voyage to Nicolaievsk, and that even supposing she had not, she could not move on account of repair until about the 15th of the 10th month of this year, and that as the sea would be ice-bound by that time, she could not sail for her destination before the 4th month of next year, and therefore it would be unreasonable to confiscate her for such remote and uncertain acts. But the master, R. Richter, stated when examined by the councillor in charge of this case: "The ship was to go directly to Nicolaievsk if the temporary repairs could be made at Loochoo." Hence, it is evident that the master had not given up the idea of going to Nicolaievsk at the time of her capture. It is the rule of International Law that a ship, which has begun the act of transporting contraband of war, is liable to confiscation, so long as her original intention has not been abandoned at the time of capture. Therefore, her capture was lawful, even granting that on account of repairs she would be unable to sail until after the 4th month of next year. Moreover, her repairs at Shanghai would not take so long as stated by the petitioners' attorney, and she could have arrived at Nicolaievsk before the North Sea was frozen over. For the above reasons, the contentions of the attorney for the petitioner are groundless and the decision is given as in the text.

Given this 18th day of the 10th month of the 38th year of Meiji, at the Sasebo Prize Court, C. Minakami, Public Procurator, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on March 22, 1906.

The following decision was given on the 12th of the 3rd month of the 39th year of Meiji, by the Higher Prize Court in the case of the German steamship *Lydia*.

Case No. LXXXVII.

Decision.

Petitioners—Theodor und F. Eimbecke, Hamburg, Germany.

Petitioner—H. Wilhelm Dieckmann, jr.

Representative—R. Richter, Master of the *Lydia;* Buergermeister Schmidtstrasse, Bremerhaven, Germany.

Attorney—T. Ishibashi, Counsellor at Law, 41, Togiya Machi, Nagasaki.

In the case of the steamship *Lydia*, captured by the Japanese man-of-war *Nippon Maru*, on the 26th of the 7th month of the 38th year of Meiji, while at anchor at Naha Port, the Sasebo Prize Court gave the decision on the 18th of the 10th month of the same year, confiscating the ship. Whereas, T. Ishibashi, attorney for R. Richter, representative of the petitioners, Theodor und F. Eimbecke and H. Wilhelm Dieckmann, has filed an appeal against that decision, the case has been examined and the following decision is given, B. Ishiwatari, Public Procurator of the Higher Prize Court, taking part.

The main points of appeal by T. Ishibashi, attorney for the petitioners, against the original decision are as follows:

On the 16th of the 7th month of the 38th year of Meiji, this ship encountered a typhoon, in N. Lat. 27° 40′ and E. Long. 131° 2′, while bound for Nicolaievsk, and on the 17th the sea was so heavy that her steering gear was destroyed. After drifting for three days, she managed to make a jury-tiller on the 20th, but being unable to navigate so far as Nicolaievsk in such an unseaworthy condition, it was decided by a conference of the ship's officers, held from 5 p.m. to 8, to go to Shanghai. (The ship's position at noon of that day was N. Lat. 26° 45′ and E. Long. 131° 35′.) In accordance with this decision, she steamed back for three days, 250 miles. Her jury-tiller was again broken in the vicinity of Loochoo Island, between 1 and 4 p.m. on the 23rd of the 7th month, and she was crippled. So she signalled for help to the signal station on Kiyamu Cape, and was taken to Naha Port by the *Futami Maru* at 5 p.m. on the 24th. Finally she was captured by the Japanese man-of-war *Nippon Maru*, on

the 26th, while at anchor there. As the foregoing shows, this ship was not captured on her way to Nicolaievsk, but while at anchor at Naha Port, after having given up her voyage and having run back about 250 miles toward Shanghai. According to International Law, a ship that has begun to transport contraband of war for the benefit of the army or navy of the enemy is exempt from capture, if she has given up that purpose. Hence, this ship should be released. The original Court denied the fact that she turned back towards Shanghai, quoting the master's statement in this affidavit, *i. e.*, "the ship was to go directly to Nicolaievsk if the temporary repairs could be made at Loochoo." But that she ran back for three days about 250 miles towards Shanghai, was an actual fact, not an argument on paper. On the other hand, the above cited statement of the master is too obscure to be true, so, perhaps, as contended by the master in the original Court, it may be a mistake of the interpreter. Even supposing the master made the statement that the ship was to go to Nicolaievsk, the fact that she turned back towards Shanghai is counter-proof. Hence, it is proper, according to the principles of evidence, to accept the fact in preference to the statement. Moreover, in the ship's log-book which was seized at the time of capture, and in which no subsequent alteration could be made, it is clearly mentioned that the decision to steer back to Shanghai was made at a conference of all the ship's officers, held from 5 p.m. to 8 on the 20th of the 7th month, and there is no doubt that unless exceptional circumstances took place, the master would not alter that decision at his sole discretion. Even accepting the statement in the master's affidavit, as proof, if the whole sentence be read carefully, it may be construed that the voyage to Nicolaievsk was abandoned. For it says "the ship was to go directly to Nicolaievsk if temporary repairs could be made at Loochoo, but as it was impossible to find a smith, I intended to go to Nagasaki." This shows that as the repairs could not be made at Loochoo, she was unable to go to Nicolaievsk. Being in answer to a supposititious question of the Councillor, "What did you intend to do if the repairs could be made at Loochoo," it was a conditional statement. Hence, the fact that this ship turned back to Shanghai, and the statement in the log-book cannot be upset by such a statement.

The main points of the response of S. Yamamoto, Public Procurator of the Sasebo Prize Court, are:

The steamship *Lydia* is the common property of Theodor und F. Eimbecke, and H. Wilhelm Dieckmann, jr., so there was no necessity of a charter party to one of the joint owners, Dieckmann, jr., but in order to evade capture by Japanese men-of-war, a charter was contracted, and the manifest was prepared in two different forms, when

leaving Hamburg, *i. e.*, one with Hongkong as the destination, and the other with Nicolaievsk, the latter manifest was sent by mail and kept in the ship after she arrived at Hongkong. By these means, she intended to transport contraband of war to Nicolaievsk, the enemy's territory. That she could not accomplish her object on account of an unexpected hindrance, makes no difference so far as the fact of contraband carriage is concerned. The right of a belligerent to capture a contraband carrier, acting for his enemy, and to confiscate the contraband goods, is not limited to cases when the object could be accomplished without hindrance. If a ship sails with the object of transporting contraband goods, she must be taken to be in the course of her original voyage, even when drifting because of damage to her hull caused by a typhoon, or when taking shelter in a harbour, as in this case. The petitioners argue from the fact that her steering gear having been destroyed by a typhoon, she temporarily turned back towards Shanghai and applied for help at the signal station on Kyamu Cape, that she had given up her original voyage. But the fact that she sought repairs and temporary shelter show that she intended to continue her original voyage, and consequently cannot be taken as proof that she had given it up. The master stated that the ship was to go to Nicolaievsk, her destination, if her steering gear could be repaired at Loochoo. The petitioners contend that if the whole sentence be read carefully, it may be construed that she had abandoned her voyage to Nicolaievsk, for it says, "the ship was to go to Nicolaievsk if repairs could be made at Loochoo, but as it was impossible to find a smith, I intended to go to Nagasaki," and that this shows that as the repairs could not be made at Loochoo, she was unable to go to Nicolaievsk. But even supposing her damage was so great that she could not go to Nicolaievsk, it does not follow that she had given up the idea of transporting the contraband of war. Because, as mentioned in the bill of lading, if by the act of God, or some other event, the transportation could not be made by this ship, the master was bound to transport the cargo to its destination by another ship or by being towed. Moreover, her damage was not so great as asserted by the petitioners, and she might easily have been repaired and have sailed for her destination before the North Sea was frozen over. In short, her act of holding an officer's conference, and turning back for Shanghai, was for the purpose of getting shelter there, and that of applying for help at the signal station on Kyamu Cape, was for the purpose of getting repairs at the Loochoo port in order to continue her original voyage, and there is nothing to prove that she had abandoned the original object of her voyage. Therefore, the decision of the original Court confiscating this ship as a carrier

of contraband by fraud was reasonable, and this appeal should be dismissed because it is entirely groundless.

The reasons of decision by the Higher Prize Court are given as follows:

Nicolaievsk, having the command of the mouth of the Amur River, is an important place of defence conjointly with Vladivostock, protecting the rear of the Russian army in Manchuria, and it is a conspicuous fact that since the sea communications of Vladivostock have been almost suspended by the Japanese Squadron, that place has become the chief gateway for the importation of war materials, and its defence has been immensely strengthened by constructing forts, and by stationing there an army and gunboats and torpedo boats. The cargo of this ship, consisting of machine oil, cylinder oil, wheel pitch, madia pitch, oil cans, acetic acid, washers, belting iron, leather belts, emery and hemp ropes, which are materials for building or equipping ships, and table salt and salt which are provisions, when destined to that place, must be regarded as contraband of war intended for the military use of the enemy. Although this ship was chartered by H. Wilhelm Dieckmann, jr., and it appeared at her departure that she was used for the transportation of goods shipped by him, yet the person who gave instructions about the loading of her cargo at Hamburg was Dreiel, a clerk of F. Eimbecke, one of the joint owners of this ship, and Noevel & Co., the consignee of the cargo at Nicolaievsk, are partners of unlimited liability in the company who are the other owners of this ship. Besides, the master was instructed to fly the said consignee's flag when she arrived at Nicolaievsk. Considering the above facts, it must be inferred that the transportation of the said contraband of war by this ship was contrived on the joint account of the common owners. One of the bills of lading contains the statement that the goods were loaded for Hongkong, and the master explained that he did not know on leaving Hamburg that the ship was bound for Nicolaievsk, but this other statement proves that the bill of health given by the Hamburg police station, and certified by a Russian officer, which is a necessary paper for a ship bound to a Russian port, and the other bill of lading which contains the statement that the goods were destined to Nicolaievsk, were prepared at Hamburg on the 7th of April, 1905, *i. e.*, a day before the ship's departure. Hence, it is evident that she was bound for Nicolaievsk from the first, and that in order to evade capture by the Japanese men-of-war which were then cruising between Hongkong and Singapore, and to accomplish her illicit voyage more easily, she carried only the papers containing the statement that her destination was Hongkong, until she reached that port, and there she received by mail the other

bill of lading and bill of health giving her destination as Nicolaievsk. In other words, she attempted to transport contraband of war by fraudulent means. The appellant contends that this ship was not captured on her voyage to Nicolaievsk, but while at anchor in Naha Port, having applied for help, after having given up her voyage on account of the damage to her steering gear caused by a typhoon, and having steamed back towards Shanghai 250 miles, and that even supposing she was transporting contraband of war, she is not liable to confiscation, because she had altered her original purpose. Her log-book contains the statement that she encountered a typhoon, and that her steering gear was damaged, and that she turned back in order to take shelter at Shanghai, but there is no proof that she had given up the idea of going to Nicolaievsk. Moreover, her damage was so slight that she might have been repaired and have sailed again for Nicolaievsk before the sea-freezing season, and consequently the fact that she encountered the disaster cannot be taken as evidence that her original object of transporting contraband of war had been abandoned. It is admitted by International Law that when the object of a ship's voyage is the importation of contraband of war, she, even being a neutral ship, may be confiscated. Besides, as explained above, this ship took fraudulent means in order to accomplish her voyage. For the above reasons, her confiscation together with the cargo by the original Court, was quite reasonable, and the appeal is groundless. The decision is therefore given as follows:

This appeal is hereby dismissed.

Given this 12th day of the 3rd month of the 39th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case VI. *The Scotsman.*

Published in the *Official Gazette*, Tokyo, on Sept. 28, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 7th of the 6th month of the 38th year of Meiji, by the Yokosuka Prize Court in the case of the British steamship *Scotsman.*

No. XI.–1.

Decision.

Petitioners—The London Steamship Co., London, England. John White, Manager.

Advocate—G. Akiyama, Counsellor at Law, 75, Yamashita Cho, Yokohama.

In the case of the British steamship *Scotsman*, trial has been held and the following decision given:

Text of the Decision.

The British steamship *Scotsman* is hereby confiscated.

Facts and Grounds of the Decision.

The steamship *Scotsman* is the property of the petitioner, and is a merchantman, registered at London, flying the British flag. According to the charter party entered into at Shanghai, China, on the 4th of the 1st month of the 38th year of Meiji, between Dodwell & Co., L'm'd, Shanghai, agents of the petitioner, and R. Perez & Co. (the firm was dissolved on the 12th of the 2nd month of the same year and the business transferred to a Shazaron (?) & Co. of Shanghai), the ship took in at Saigon, French dominion, about 20,000 bags (about 134,000 pounds in weight) of Saigon rice with the object of transporting it to Vladivostock. The consignee is P. Losie (?), & P. Veal of Saigon, agents of R. Perez & Co., and the consignee is put down in the bill of lading as, "to order." The charter party was not carried by the ship. On the 24th of the 1st month of the same year, the ship left Saigon bound for Vladivostock and arrived at Hongkong on the 29th of the same month. After leaving the latter port on the 1st of the 2nd month, she purposely took a circuitous route, and while attempting to proceed to Vladivostock by the Strait of Tsugaru, on the 14th of the same month at 7 p.m., she was captured by the Japanese torpedo boat, No. 30, near the Shiokubi lighthouse in the Strait of Tsugaru.

The above facts are clear from the statement submitted by Junior Lieutenant R. Tominaga, representative of the commanding officer of torpedo boat, No. 30; from the testimony given by Lieutenant N. Nagasama, representing the commanding officer of torpedo boat, No. 30, and by Edward Albert Mackenzie, master of the steamship *Scotsman*; and from the certificate of the ship's nationality, the clearances from Saigon and Hongkong, the manifest, the bill of lading, the log-book, the charter party produced by the petitioner's advocate, the certificate of R. Perez prepared at the Spanish Consulate at Shanghai, etc.

The purport of the petition is as follows:

Even if the cargo is contraband of war, the ship should not be confiscated together with it, for it was not the property of the owner. Moreover, the owner had no knowledge of the transportation of contraband of war; and the destination of the ship and cargo to Vladivostock was clearly stated in the ship's papers and no false statement

was made in them. The ship did not carry the charter party at the time of capture, because the contract was concluded at Shanghai while she was at Saigon and there was no time to forward it.

Furthermore, rice, even when transported to a port where the enemy's forces are assembled, is not restricted to their use, but is useful also for the support of people outside the military service. The unreasonableness of including rice among contraband goods has been argued by many Continental scholars. In England also, during the South African War, Dr. Holland, after recounting the English usage, argued that provisions should be contraband of war only when clearly destined to the enemy's army, navy or forts; and even then, only the right of pre-emption should be exercised. During the French-Chinese Hostility in 1885, when France, from strategical necessity, waived her traditional principle and declared rice contraband of war, England made a strong protest and insisted upon the unreasonableness of including it among contraband goods. In the Chino-Japanese War, England and France made an unconditional opposition to China when the latter country declared rice contraband of war, and to this opposition, our country, it seems, did not object. Thus almost all the powers agree in not considering rice contraband of war, and this principle is generally recognised by scholars. Now admitting that Japan declared rice contraband only during the Russo-Japanese War and only when clearly destined to the enemy's forces, still it is proper to consider it, when transported to a port like Vladivostock which has the dual character of a commercial and a naval port, as destined to Vladivostock, the commercial port, and not as intended for military use. This is very clear from the decision of the case of the *Neptunus* captured in 1766 during the Dutch-English War. Moreover, rice is not a usual food of the Russians, while on the other hand there are many foreigners residing at Vladivostock who use it as such. As to the obscurity with regard to the consignee, it was because the bill of lading was prepared in the form making the cargo deliverable, "to order," and there is nothing strange in this. For the above reasons, the petitioner requests a decision releasing the ship.

After due consideration the Court concludes as follows:

Vladivostock is the only Russian naval port in the East, and is actually the base of a Russian squadron. Since the outbreak of the Russo-Japanese War, the Russian Government has made it a depot where they have been devoting their whole energy to collecting military stores; and ordinary trade there had almost ceased. These are conspicuous facts, and any goods such as rice, the cargo of this case, which become contraband of war according to circumstances, should be considered, when destined to Vladivostock, as intended for mili-

tary use, unless there is strong proof to the contrary. Especially in this case, notwithstanding the statement in the bill of lading that the cargo was to be delivered to order, the master states that upon his arrival at Vladivostock he was to be informed with regard to the consignee by an ice-breaker; and in the charter party, there is an article to the effect that the ship was entitled on arrival at Vladivostock, if necessary, to the service of an ice-breaker free of charge. Now, according to the Handbook of Siberia, 1901–1902, published by the authority of the Russian Maritime Provinces, the ice-breakers of Vladivostock belong to the Siberian Squadron of the Russian Navy. The gross tonnage of this ship is 1679 tons, and according to the manifest, the value of her cargo was about 210,000 francs; but the charterer paid the exorbitant sum of 6250 pounds, British currency, for her voyage from Saigon to Vladivostock. Again, according to the statement of the master, he thought that the owner paid a high rate of insurance for this voyage, expecting confiscation of the ship, so that it is impossible to consider the shipment in this case as an ordinary mercantile transaction. Moreover, although the petitioner's advocate pleads that rice is not a usual food of the Russians, yet according to the food Regulations of Russia, rice is used by the Russian forces as food, and it is a conspicuous fact that the Russian forces in the East are employing Chinese, Koreans, etc., who eat rice as usual food. Summing up these facts, the rice on board this ship must be assumed to be military stores belonging to the Russian Government, and consequently it is proper to consider it as contraband of war. The advocate, citing the opinion of Continental scholars and of the British writer, Dr. Holland, and instances in the Franco-Chinese and Chino-Japanese Wars, states that almost all the Powers agree in not considering rice as contraband of war and that the principle is generally recognised by scholars. But Dr. Holland and other British scholars affirm that rice should be considered contraband only when clearly destined to the enemy's army, navy or forts. In the present war when Russia declared rice absolutely contraband, Great Britain made a protest that she would consent to the belligerents including rice among conditionally contraband goods, but that specifying it as absolutely contraband was against International Law and usage (The Blue Book of 1905, correspondence with Russia, No. 1, the instruction of Lord Lansdowne, British Minister of Foreign Affairs, given to Sir Charles Hardinge, Ambassador accredited to St. Petersburg, dated the 1st June, 1904). From these one can easily see what the British principle is. The same principle is maintained by the United States of America, which is clear from the usage of that state and from the opinion of her scholars. Russia, too, in this war declared rice as con-

traband, as has been stated. Thus the argument of the petitioner's advocate, that all Powers agree in holding rice as non-contraband, is entirely groundless. In the instance in the Franco-Chinese Hostilities, cited by the advocate, Great Britain protested, as she did to Russia, to France's specifying rice as absolutely contraband, but not to her holding it as conditionally contraband. Again, admitting the instance in the Chino-Japanese War cited by the advocate, yet Japan, in Art. X. of her Regulations Governing Captures at Sea of that time, included provisions among conditionally contraband goods, and no alteration was made during that war. Next, the petitioner's advocate pleads that the ship was not furnished with a charter party because there was no time to forward it. But according to that document, the contract was concluded at Shanghai on the 4th of the 1st month of this year, while the ship was at Kobe; and as the ship left Saigon for Vladivostock on the 24th of the same month, arrived at Hongkong on the 29th and left on the 1st of the 2nd month, it must be considered that there was sufficient time, but nevertheless the ship was not furnished with that document. Moreover, the owner, as has been stated, chartered the ship to transport rice to Vladivostock for an exorbitant sum of money; he paid a very high rate of insurance, expecting capture by Japanese men-of-war; the consignee of the cargo, according to the master's statement, was to be intimated to him by an ice-breaker belonging to the Russian Navy; in the charter party there is an article entitling the ship to receive assistance from an ice-breaker free of charge; according to the master's statement, he received orders from the owner concerning this voyage; the ship purposely took a circuitous course in going to Vladivostock; and the cargo consisted of nothing but rice, which is contraband of war. Considering these facts, it may be assumed that the owner not only knew that the cargo consisted of military stores belonging to the Russian Government, but that he deliberately undertook the transportation. In other words, the petitioner employed his ship to assist the enemy; and when a ship is guilty of such an act, she is liable to confiscation together with the contraband cargo. This is recognised both in the theory and the usage of International Law.

As this ship is confiscable for the above reasons, there is no need of answering the other points of the advocate's argument; and the decision as stated in the text has been given.

Given this 7th of the 6th month of the 38th year of Meiji, at the Yokosuka Prize Court, the Public Procurator, Y. Kobayashi, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Sept. 28, 1905.

The following decision was given by the Higher Prize Court on the 5th of the 9th month of the 38th year of Meiji, in the case of the British steamship *Scotsman*.

Case No. LXXV.

Decision.

Petitioner—The Lombard Steamship Co., 20, Great St. Hales, London, England.

Advocate—G. Akiyama, Counsellor at Law, 75, Yamashita Cho, Yokohama.

A protest has been filed by G. Akiyama, advocate of the petitioner, the Lombard Steamship Co., against the decision of the Sasebo Prize Court given on the 7th of the 6th month of the 38th year of Meiji, in the case of the British steamship *Scotsman*, captured by the Japanese torpedo boat, No. 30, on the 14th of the 2nd month of the 38th year of Meiji, near the Shiokubi lighthouse in the Strait of Tsugaru. The original decision condemned the ship. The protest has been tried before this Court, the Public Procurators, K. Tsuzuki and B. Ishiwatari, taking part.

The purport of the protest filed by G. Akiyama, the petitioner's advocate, is as follows:

The decision of the Yokosuka Prize Court given on the 7th of the 6th month of the 38th year of Meiji, confiscating the steamship *Scotsman*, is unlawful; and the advocate requests that it be over-ruled and a new decision given releasing the ship. As the grounds of his appeal, he states:

(1) The transportation of the cargo by this ship was a legitimate mercantile transaction which neutrals are at liberty to carry on, and the confiscation by the original court of the ship together with the cargo, as guilty of assisting the enemy, was unreasonable.

(2) A ship that undertakes the transportation of contraband goods undertakes a mercantile transaction, so that, excepting the case in which the owner of the ship and the owner of the cargo are the same, the ship should not be confiscated. On the other hand, in the case of an owner, who has performed unneutral service, punishment shall be confiscation of the ship. This is a general rule of International Law. The original Court, however, ignored this rule and gave decision, confiscating the ship on the ground that the ship was liable to confiscation together with the contraband cargo for having com-

mitted an act to assist the enemy. The decision is, therefore, unlawful. Regarding the penalty for transporting contraband, the general rule of International Law is not to inflict any punishment upon the ship except the loss of time, expense and freight. But sometimes, when the owner of the ship is also the owner of the contraband cargo, or when the ship uses fraudulent means in taking the contraband cargo, the ship is confiscated together with the contraband cargo. In these cases, the collusion of the owner in the transportation of contraband is clear, and he being guilty of illegal conduct, the ship used for the purpose is of course liable to confiscation. But in the case under consideration, the ship carried common merchandise belonging to another person, and was not engaged in the transportation of contraband. And even if it were admitted that the cargo was contraband, she did not transport it knowingly or by fraud. Yet the original Court considered her as intending to assist the enemy and decreed her confiscation, as if she were guilty of unneutral service. The decision was, therefore, unlawful.

(3) In transporting the cargo from Saigon to Vladivostock, she did not use fraudulent means. This is very clear from her papers, in which it was clearly stated that she was bound for Vladivostock and in none of which was a false destination mentioned. Thus, there is no doubt that she never tried to conceal her destination. Yet the original Court, summing up the facts recounted in the decision, judged that the ship was not engaged in a mercantile transaction, but was guilty of unneutral service, as she transported cargo knowing it to be military stores belonging to the enemy. The decision was, therefore, unlawful, being based upon misinterpreted facts. Because:

(a) Vladivostock is Russia's only naval port in the East, but at the same time it is her only commercial port. Its trade was not suspended when this cargo was transported, and merchants of neutral states were carrying on business there. In case any goods, useful in peace as well as in war, are in transit to a port having the dual character of a commercial and a naval port, international usage is to consider them as transported to the commercial port. This is very clear from the decision of the case of the *Neptunus*, captured in 1798 during the Dutch-English War. It is, therefore, against precedent to consider this ship as engaged in the transportation of contraband;

(b) Ice-breakers belong to the Russian Government, but they break ice for vessels of all nationalities that go in or out of Vladivostock and give them other assistance, as well in war as in peace time. Therefore, because there was an article in the charter party that this ship was entitled to the assistance of an ice-breaker free of charge, when required, or because the master thought he would

learn from such a vessel who the consignee was, the cargo of this ship cannot be regarded as military stores destined to the Russian forces;

(c) The payment of a large sum for the charter of this ship and the payment of a high rate of insurance by the owner are things common in war time. Especially when a ship has to make a voyage to a belligerent port lying near the theatre of war, higher rates of charter and insurance will be charged than in peace time, in order to provide against war risk in addition to the ordinary risks of the sea. This is a mercantile usage, generally recognised, and there is nothing strange in it. If it be considered extraordinary, it is a gross mistake of fact;

(d) The ship was not provided with a charter party, because there was no time to forward it, the place where the contract was signed being far distant from the place where the ship was lying. Were it admitted that there was sufficient time, the default was but negligence of the agent and cannot be considered as an attempt on the part of the owner to deceive. And were there no charter party among ship's papers, the conduct of the owner cannot be assumed as fraudulent on that account. Moreover, omission of the charter party is not sufficient to delude a captor;

(e) This ship, in going to Vladivostock, took a circuitous course through the Pacific Ocean, because, as is clear from the statement of the master, the China Sea and the Japan Sea are very rough at that season. It is the liberty of a navigator to change the course according to the weather, and with this, even the owner cannot interfere. There is nothing strange in this ship's taking a circuitous route.

Thus none of the facts on which the original Court based its decision is sufficient to infer that the petitioner attempted to assist the enemy.

(4) It may be that rice is included in the provisions of the Russian forces, but it is an undisputed fact that it is not a usual food of the Russians. Moreover, in North Korea and Manchuria, the Russian forces employed Koreans and Chinese, but at Vladivostock and its vicinity, as a matter of fact, there were no such coolies employed. It is, therefore, wrong to consider the cargo of this ship as intended for the food of such coolies.

Thus none of the facts recounted by the original Court as ground of its decision is sufficient to prove this cargo to be military stores. In a word, rice, even when transported to a port where the enemy's forces are assembled, is not limited to their use, but is also useful to support people outside the military service; and were its supply entirely cut off the people would be reduced to starvation. Therefore,

the unreasonableness of including rice among contraband goods is generally maintained. Thus the cargo of this ship should be considered common merchandise, as there is no proof that it was intended for the Russian forces, and consequently, the confiscation of this ship was unlawful.

The gist of the answer of K. Yanagita, Public Procurator of the Yokosuka Prize Court, to the above protest, is as follows:

(1) It is alleged that this ship was engaged to transport her cargo under a charter party; but as she was not furnished with a duplicate of that document, a necessary ship's paper, the burden of explaining this grave default lies, under International Law, upon the petitioner. But the petitioner has not been able to give any explanation. Admitting that the so-called charter party produced after the capture of the ship was true, it is clear from the articles of the contract, from the master's statement in connection with them, and from the conduct of the ship, that the owner or his agent colluded in the transportation of this cargo, knowing it to be contraband of war. And the majority of scholars agree that in such a case the penalty of confiscation should be inflicted upon the ship as well as upon the cargo. The decision of the original court is, therefore, proper.

(2) The transportation of contraband goods is not theoretically a natural right of neutrals, and a belligerent is entitled to stop such practice, and at the same time to prevent repetitions in future by inflicting penalties. There are many cases in which an owner takes a few contraband goods in good faith, and it is practically impossible to prove intention or collusion on the part of an owner. Hence, the general rule is to take some conspicuous circumstances as the criterion in making an assumption and not to search into other circumstances. In the case under consideration the records clearly show that the owner well knew of the affair and assisted in prosecuting it; and there is no reason given in the petitioner's protest for supposing that he was not guilty of unneutral conduct. Concerning the incompleteness of the ship's papers, and other suspicious acts, the petitioner should have given reasonable explanations in order to avoid responsibility; but, as above stated, he has produced no such explanations. He alleges that it was the fault of the agent; but the aggrieved belligerent has nothing to do with the consequence of the agent's fault upon the owner. Moreover, the petitioner only repeats its formal arguments and has nothing new to say about this point, which fact leads one to infer that it was not a mistake, but was done with intention. It is probable that the reason the ship was not furnished with a duplicate of the charter party was either because no such contract had been concluded and the sale of the cargo was on the account of the owner of the ship, or else because

the wording of the contract too clearly showed the illegal nature of the cargo and the collusion of the owner in the transportation.

For the above reasons the protest has no ground, and the Procurator thinks that it should be rejected.

The decision of this Court is explained as follows:

When food stuff, such as the rice now under consideration, is destined to the enemy's army or navy or when it is destined to the enemy's territory, and when it can be inferred that it is intended for his military forces, it is contraband of war and is confiscable. This is recognised in International Law. As to the destination to Vladivostock of the Saigon rice under consideration there is no dispute, and Vladivostock is an important Russian naval port. Since the outbreak of the war Russia has made it not only the base of her squadron, but also a depot where she has been collecting arms, provisions, coal, and other military stores, and ordinary trade there has almost ceased. These are conspicuous facts. In the charter party of the *Scotsman*, the steamship now under consideration, there is an article guaranteeing that on the arrival at Vladivostock the ship should be entitled, if necessary, to the service of an ice-breaker, free of charge, to open a passage for her, whether in or outside the port. It is clear that the ice-breaker, as admitted by the petitioner, belongs to the Russian Government. According to the statement of the master, that on his arrival at Vladivostock he expected to receive information from an ice-breaker as to who the consignee was. And, according to the manifest, the cargo was worth about 210,000 francs, but the charter of the ship from Saigon to Vladivostock was 6250 pounds, British currency. Considering these facts, this cargo cannot be regarded as common merchandise transported to Vladivostock. The advocate states that when this cargo was being transported to Vladivostock, trade there was not suspended, but was being carried on as usual; but as he has not produced any evidence, the statement cannot be taken as true. Again, the advocate argues that the rice, the cargo of this ship, should be regarded, according to the precedent of the *Neptunus* case, as intended for peaceful purposes. But the *Neptunus* case and this case are quite different in the circumstances of the places of destination; hence, the former cannot be taken as a precedent. In a word, the original court was right in considering the Saigon rice, the cargo of this ship, as contraband of war. Summing up the facts above mentioned, which lead us to assume that the Saigon rice consigned to Vladivostock in this ship was not common merchandise, and the fact that the whole of the cargo was rice, which is contraband, together with the statement of the master that the owner would not incur any loss if the ship were confiscated, as he had her insured for a sufficient sum, expecting capture, we can safely assume that the object of this

ship was the transportation of contraband of war. And the confiscability of a ship whose object is the transportation of contraband of war is recognised in International Law, and this Court deems it to be reasonable. For the reasons explained above, the decision of the original court confiscating this ship is just, so that there is no need to answer the other points of the protest.

The decision of this Court is, therefore, as follows:

This protest is hereby rejected.

Given this 5th day of the 9th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case VII. *The Severus.*

Published in the *Official Gazette*, Tokyo, on May 20, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 28th of the 4th month of the 38th year of Meiji, by the Yokosuka Prize Court, in the case of the German steamship *Severus*.

Decision.

No. XIII.

In the case of the German steamship *Severus*, trial has been held and the following decision has been given:

Text of the Decision.

The German steamship *Severus* and 3845 tons of coal on board are hereby confiscated.

Facts and the Grounds of the Decision.

The steamship under consideration is the property of Claus Peter Anderson, of Hamburg, Germany, and is a steel vessel of 2133.42 tons register. She is registered at Hamburg, and flies the German flag. The ship took in, at Cardiff, 3845 tons of twice-sifted Cardiff coal, with the object of transporting it to Vladivostock. The consignor of the cargo is Powell Dufferin & Co., of Cardiff, and its destination is put down in the bill of lading as Manila, but its owner is not known. The ship obtained a clearance as bound for Manila, and left the port of Cardiff on the 24th of November, 1904. She called at Algiers, Port Said, Saban, and Labuan. After leaving the last-named port on the 31st of January, 1905, she did not touch either at Manila or any other place, but passed the Philippine Archipelago and entered the Pacific Ocean, intending to proceed to Vladivostock by a route as far from

Hokkaido as possible, making first for Olga Bay, Russia, by way of the straits of Yetorup and Sova, and there hiring a pilot for her destination. According to this plan she had passed the Strait of Yetorup and arrived off Shebetoro, when, on the 23rd of 2nd month of the 38th year of Meiji, at about 1 p.m., she was hailed by the Japanese man-of-war *Hongkong Maru*. She answered that she was going to Olga Bay with coal on board, and was captured by the same man-of-war.

The above facts are clear from the statement submitted by Sub-Lieutenant K. Nishiuchi, I. J. N., representative of Captain T. Inoue, commanding the *Hongkong Maru*; from the testimony given by Wilhelm Bernt, master of steamship *Severus*, and Sub-Lieutenant K. Nishiuchi, I. J. N.; from the bill of lading, three clearance certificates, certificate of the ship's nationality, two volumes of the ship's log-book, one volume of the rough log, and the copy of the testimony given by Grefenitz, master of the steamship *Romulus*, in connection with the trial of that vessel.

After due consideration, the Court concludes as follows:

Vladivostock is an important Russian naval port in the East, and is actually a base of the Russian fleet. Moreover, since the outbreak of the Russo-Japanese War, the Russian Government has been employing the port as a base of supplies and has been exerting its whole energy to collect military stores there. Thus common trade has been almost totally suspended. This is a conspicuous fact, and consequently goods, such as coal, provisions, etc., which become contraband of war according to circumstances, must be considered, when in transit to that port, as intended for military use, unless there is evidence to the contrary. Especially the cargo under consideration being Cardiff coal, used in this part of the world only by men-of-war, and being clearly intended for naval use, must be considered contraband of war. Furthermore, the destination of the ship to Vladivostock had been determined before she left Cardiff. Notwithstanding this, the port of destination is put down in the bill of lading and clearance as Manila, a neutral port. At Labuan she again obtained clearance, under the pretence of going to Manila, and after leaving the former port she intentionally took a circuitous route and attempted to proceed to Vladivostock by way of the Strait of Soya. These actions cannot be pardonable negligence, nor can they be considered as measures taken from any convenience of navigation, but must be considered as tricks to evade capture by hiding the place of her destination. The master of the ship says that although the statement in the clearance—that the ship was bound for Manila—was false, yet the record in the log-book was true, and her real destination was Olga Bay. But Olga Bay was not her true destination, and ship and cargo were bound for Vladivostock. This is clear from the

following: In the ship's log-book, when the ship left Labuan on January 31st, 1905, it is stated that as the steamship *Romulus* was bound to the same port as herself, it was decided to ask that ship to bring one Brandt, a coal passer of the *Severus*, who was under arrest on shore at the time of her departure. In the copy of the testimony given by Grefenitz, master of the German steamship *Romulus*, which was owned by the same person, left the same place with a similar cargo, and was bound for the same port as the ship under consideration, the master states that he took on board Brandt, one of the crew of the *Severus*; that the destination of the *Romulus* was ostensibly Hongkong, but that she was to go first to Olga Bay to hire a pilot there for Vladivostock, and that he ought to have entered in the log-book the ship's destination as Olga Bay, but that he did not do so in order not to let the crew know it. Now, comparing these two statements, it is very clear that the destination of the ship and cargo under consideration was Vladivostock. In a word, the ship was engaged in the transportation of contraband of war under false pretences. And when fraudulent acts are committed by a vessel, the vessel, as well as the contraband cargo, are liable to confiscation. This is recognised both in the theory and precedents of International Law. The decision as stated in the text has, therefore, been given.

Given this 28th day of the 4th month of the 38th year of Meiji, at the Yokosuka Prize Court, after hearing the opinion of the Public Procurators of the Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Case VIII. *The Tacoma.*

Published in the *Official Gazette*, Tokyo, on June 15, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 1st of the 6th month of the 38th year of Meiji, by the Yokosuka Prize Court, in the case of the United States steamship *Tacoma*.

Decision.

No. XVIII.—1.

Petitioner—The Northwestern Steamship Company, Ltd., Seattle, King County, Washington, North America.

Representative—John Rojine (?), President of the company.

Advocate—G. Akiyama, Counsellor at Law, 15 Uneme Cho, Kyobashi Ku, Tokyo.

In the case of the United States steamship *Tacoma*, a trial has been held and the following decision given:

Text of the Decision.

The United States steamship *Tacoma* is hereby confiscated.

Facts and the Grounds of the Decision.

The steamship *Tacoma,* now under consideration, which is a merchantman owned by the petitioner, flying the United States flag and registered at Seattle, in the State of Washington, took on board at the port of Seattle about 9000 barrels of salt beef (part of this was given to the ship's crew as food during the voyage) and a quantity of steel bars and 1 box of machine appurtenances, with the object of transporting them to Vladivostock. Of the above cargo, the salt beef was purchased in America by the Russian merchant Demby and the Ebiky Company, both of Shanghai, who entered into contracts, in November of last year, with Major-General Dessino, Shanghai, to supply Vladivostock with such goods, and was consigned by Charles Nelson and Company, of San Francisco, in the State of California, to the Russo-Chinese Bank, of Vladivostock; and the steel bars and machine appurtenances are the property of the Russian subject Alexander Georgevich Boleman, supercargo of the ship, who was on board in that capacity according to the order of the petitioner. (The said Boleman is representative and agent of Demby, with the full power of purchasing goods to be supplied to the Government establishments, individual persons, and companies. He is also intrusted by the above-mentioned Ebiky Company with the duties of examining salt beef to be purchased in America and to be transported to Vladivostock, and of delivering it to the consignee, taking the same ship in which the beef is freighted.) Before leaving Seattle the master received instructions, dated January 2, 1905, from the owner of the ship to proceed to Vladivostock, and in case there should be obstruction from blockade or ice, then to proceed to Shanghai. In spite of these instructions, he pretended the port of destination to be Shanghai and obtained clearance and health certificate. In the copy of the freight list submitted to the Custom House the same pretence was made, that the port of destination was Shanghai, and in the other copy of the freight list the port of destination is put down as Shanghai via ports. In the freight bill the part where the port of destination is entered is torn off. Thus, on January 5th, the ship left Seattle; and in the ship's journal and its duplicate deck journal and engineer's journal it is entered that the ship was bound for Shanghai. On the way she called at Dutch Harbour, and left there on the 19th of the same month, after coaling. She steered along the Aleutian Archipelago, passed the Boussole Channel, and entered the Okhotsk Sea. She then attempted to proceed to Vladivostock, but floating ice blockaded her way and she lost her freedom of movement. Thus she drifted

hither and thither for ten days. On March 13th she regained her freedom of movement, and was about to resume her voyage to her destination, when, on March 14, at 8 a.m., she was captured by the Japanese man-of-war *Takachiho* at about 40 miles southwest of Cape Shibetonitara, Shikotan Island.

The above facts are clear from the statement submitted by Lieutenant Ukawa, I. J. N., representative of the captain of the Japanese man-of-war *Takachiho*; from the testimony given by the same officer and S. S. Knowlton (?), master of the steamship *Tacoma*, and Alexander Georgevitch Boleman, supercargo of the ship; and from the papers found in possession of the said Boleman, the certificate of the ship's nationality, bill of lading (the master says that this document is a bill of lading and at the same time a charter-party; but from its nature it is deemed to be the former), the clearance, health certificate, two copies of the freight list, freight bill, ship's journal and its duplicate, deck journal, engineer's journal, letter of the owner of the ship addressed to the master, under the date of January 2nd, 1905, etc.

The substance of the petition is that the cargo of the steamship under consideration is not the property of the owner of the ship, and consequently she is not forfeitable with the cargo, even if the cargo be contraband of war; that the owner of the ship instructed the master by a written document, dated February 5th of this year (probably a mistake for January 2nd), to proceed to Vladivostock, and in case it should be impossible to reach there on account of blockade of ice, then to proceed to Shanghai; and he also caused to be entered in the bill of lading that the ship was bound to Vladivostock, which facts show that the owner of the ship undertook the transportation in good faith; that the master put down in the freight list, clearance, etc., the port of destination as Shanghai, knowing the will of the owner of the ship and apprehending the case of being unable to reach Vladivostock, and thus it was not a pretence to elude capture; that the contradiction of the port of destination in different papers can be discovered at a glance is not calculated to deceive a captor, so that International Law cannot consider it as a means of deceiving; that salt beef is not absolute contraband of war, and in case such an article is to be transported to a port like Vladivostock, which has the dual character of a naval and commercial port, it ought to be considered as an article destined for Vladivostock the commercial port, and not as supplied for military use, unless there is counter evidence. This is clear from the decision of the case of the *Neptunus*, captured during the war between England and Holland of 1798. In the case of the article in question this is the more so, since salt beef is not limited to military use; that the steel bars and machine appurtenances are the property of one Boleman, a Rus-

sian, by whose request they were transported together with the other goods, and they, too, as before stated, are not contraband of war; and therefore the petitioner demands a decision acquitting the ship.

After due consideration, the Court concludes as follows:

There does not exist any doubt that the salt beef was the enemy's military provisions, which Major-General Dessino, of the Russian Army, who is residing in Shanghai and is assisting hostile operations of the enemy, had ordered the Russian merchant Demby and the Ebiky Company, of Shanghai, to buy in America and to forward to Vladivostock, which is an important Russian base and central commissariat station, such contracts having been made between the Russian General and the said Demby and the Ebiky Company, in November of last year; and that the article was intended for military purposes, it being consigned to the Russo-Chinese Bank of Vladivostock; and consequently it is right to consider it as contraband of war. The steel bars and machine appurtenances, which are the property of Boleman, being all materials for shipbuilding, and there being no doubt of their being destined to Vladivostock, it is also clear that they too are contraband of war. Moreover, the fact that the ship obtained clearance and health certificates when she left Seattle, under the pretence that she was bound for Shanghai, although her destination to Vladivostock had been settled before her departure; that the freight bill was torn off at the part where the port of destination was entered; that a false entry was made as bound for Shanghai in the ship's journal and its duplicate, deck journal, and engineer's journal; and that the ship attempted to proceed to Vladivostock via the Strait of Soya, taking the route considered most dangerous in winter, on account of snow, wind, and ice, are none of them a pardonable negligence or a step taken for convenience of navigation or procedure, and must be considered as artifice to conceal the port of destination and to elude capture; the fact that there is the true port of destination mentioned in the bill of lading and in the letter of the owner of the ship addressed to the master, not being strong enough to prove that there was no deceitful act on the part of the ship under consideration. The intention to deceive becomes more apparent from the written statement and testimony of the officer representing the captain of the *Takachiho*, in which he says that when the ship was visited the master attempted to put away the two above-mentioned documents as not necessary and to hide them from the boarding officer. According to the testimony given by the above-mentioned Boleman, the petitioner asked him to join the ship as supercargo, knowing that the said Boleman was intrusted with a special duty by the Ebiky Company. The above-mentioned letter, which the petitioner gave to the master before departure, contains also the fact that he, the

petitioner, named routes to Vladivostock and asked him to select one to escape capture by Japanese men-of-war. Summing up all these facts, it will be seen that the petitioner furnished his ship for transportation of the cargo, being well acquainted with its nature. In other words, the petitioner with his ship committed an act of assistance to the enemy. There being thus an act to deceive and an act to assist the enemy on the part of the ship, she should be forfeited, together with her cargo, which is contraband of war, and such forfeiture is recognised both in the theory and practice of International Law. Such being the grounds of the forfeiture, there is no need to answer the arguments of the petitioner, and the decision, as stated in the text, has been given.

Given this 1st day of the 5th month of the 38th year of Meiji, at the Yokosuka Prize Court, the Public Procurator, K. Yanagita, being present.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Decision of the Yokosuka Prize Court on the Same Case (about the cargo).

Published in the *Official Gazette* on June 30, 1905.

The following decision was given on the 1st of the 6th month of the 38th year of Meiji, by the Yokosuka Prize Court, in the case of the cargo of the United States steamship *Tacoma*.

Decision.

No. XVIII.—2.

Petitioner—Charles Nelson & Co., San Francisco, California, of the United States of North America.

Representative—James Tison, Vice-President.

Advocate—G. Akiyama, Counsellor at Law, 15 Uneme Cho, Kyobashi Ku, Tokyo.

In the case of the cargo of the United States steamship *Tacoma*, trial has been held and the following decision given:

Text of the Decision.

The cargo carried by the United States steamship *Tacoma*, consisting of about 8990 barrels of salt beef, 15 steel bars, 9 bundles of steel bars, and 1 box of machine appurtenances, is hereby decided to be a lawful prize.

Facts and Grounds of the Decision.

Of the goods under consideration, which have been consigned by the petitioner, about 8990 barrels of salt beef (at first when the cargo was

loading at Seattle, North America, there were about 9000 barrels of salt beef, but part of it was given to the ship's crew as food during the voyage) were purchased in America, with the object of sending it to Vladivostock, by Demby, Russian merchant, and the Ebiky Company, both of Shanghai, according to the contracts entered into in November of last year by said Demby and Ebiky Company with Major-General Dessino, Russian Army, also of Shanghai; the steel bars and machine appurtenances are the property of Alexander Georgevitch Boleman, and the petitioner embarked them at Seattle, in the steamship *Tacoma*, with the object of transporting them to Vladivostock. (The consignee of the salt beef is the Russo-Chinese Bank, Vladivostock.) The steamship *Tacoma* left Seattle on January 5th, 1905, and called on her way at Dutch Harbour. She left the latter port on the 19th of the same month, steered along the Aleutian Archipelago, passed the Boussole Channel, and entered the Okhotsk Sea. She then attempted to steer to Vladivostock, but floating ice blocked her way and she lost her freedom of movement. Thus she drifted hither and thither for ten days. On March 15th she regained her freedom of movement, and was about to resume her voyage to her destination when, on March 14th, at 8 p.m., the cargo, together with the ship, was captured by the Japanese man-of-war *Takachiho*, at about 40 miles southwest of cape Shibetonitara, Shikotan Island.

The above facts are evident from the written statement submitted by Lieutenant Ukawa, I. J. N., representing the captain of the man-of-war *Takachiho*; from the testimony of the same officer and of S. S. Knowlton (?), master of the steamship *Tacoma*, and of Alexander Georgevitch Boleman, who had charge of the cargo; and from the papers found in the hands of the said Boleman, the bill of lading (the master says that this document is a bill of lading and at the same time a charter-party, but from its nature it is deemed to be the former), two copies of freight lists, freight bill, etc.

The gist of the petition is that the goods in question are not from their character contraband of war; that in case such goods are to be transported to a port like Vladivostock, which has the dual character of a naval and commercial port, unless there is counter-evidence, they ought to be considered as goods destined for Vladivostock the commercial port, and not as supplied for military use; that this is evident from the case of the *Neptunus*, captured during the war between England and Holland of 1798; that in the case of the goods in question this is the more necessary, since the goods are not limited to military use; but the steel bars and machine appurtenances are the property of Boleman, a Russian, by whose request they were transported together with the other goods, and they, too, as before stated, are not contra-

band of war; and, therefore, the petitioner demands a decision acquitting them.

After due consideration, the Court concludes as follows:

There can be no doubt that the salt beef in question was intended for the enemy, to be used for military purposes, the goods being destined to Vladivostock, which is an important Russian base and commissariat station, and bought by the Russian merchant Demby and the Ebiky Company to the order of Major-General Dessino, of the Russian Army, who is residing at Shanghai and assisting the hostile operations of the enemy, and the goods being consigned to the Russo-Chinese Bank at Vladivostock; therefore it is right to consider them as contraband of war. The steel bars and machine appurtenance, which are the property of said Boleman, being all materials for shipbuilding, and there being no doubt of their being destined to Vladivostock, it is clear that they, too, are contraband of war. And if they are contraband of war they are forfeitable, even though transported under a neutral flag. This is recognised by the Declaration of Paris of 1856, by International Law, and precedents.

The goods under consideration being forfeitable on the above grounds, there is no need to reply to the argument of the petitioner, and the decision, as stated in the text, has been given.

Given this 1st day of the 6th month of the 38th year of Meiji, at the Yokosuka Prize Court, the Public Procurator, K. Yanagita, being present.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on June 31, 1905.

The following decision was given on the 8th of the 8th month of the 38th year of Meiji, by the Higher Prize Court, in the case of the United States steamship *Tacoma*.

Decision.

Case No. LXXI.

Petitioner—John Rojine, President of the Northwestern Steamship Company, Limited, Seattle, King County, Washington State, United States of America.

Advocate—G. Akiyama, Counsellor at Law, 15 Uneme Cho, Kyobashi Ku, Tokyo.

A protest has been filed by G. Akiyama, advocate of the petitioner, John Rojine, against the decision given by the Yokosuka Prize Court,

on the 1st of the 6th month of the 38th year of Meiji, in the case of the United States steamship *Tacoma*, condemning the said ship, which was captured by the Japanese man-of-war *Takachiho*, on the 14th of the 3rd month of the 38th year of Meiji, at about 40 miles southwest of Cape Shibetonitara, of Shikotan Island, and trial has been held before this Court, the Public Procurators, K. Tsuzuki and B. Ishiwatari, taking part.

The substance of the protest preferred by G. Akiyama, the petitioner's advocate, is that the decision made by the Yokosuka Prize Court, on the 1st of the 6th month of the 38th year of Meiji, condemning the steamship *Tacoma* should be repealed and a new decision be given, releasing the said steamship. As the grounds of his protest, he insists that in undertaking the transportation of the cargo the petitioner did a free act of neutral commerce; that in carrying out this undertaking he never used any deceitful means, nor was there anything proving that he was guilty of an act to assist the enemy; that in spite of this the original court considered that there were, on the part of the steamship, acts to deceive and acts to assist the enemy, and declared the forfeiture of the ship together with the cargo; and that, therefore, the declaration of the original court is unlawful.

The substance of the answer of K. Yanagita, Public Procurator of the Yokosuka Prize Court, is that the petitioner protests that the decision condemning the steamship is unlawful, as there was no act of deceit nor any act to assist the enemy in transporting the contraband of war to Vladivostock; but the ship made a false statement concerning the port of its destination. The greater part of her papers, too, are false and unlawful. Moreover, many evidences show that the owner of the ship joined the undertaking to supply military provisions and tried to achieve the object, to the enemy's benefit. Thus the shipowner cannot be absolved from the responsibility.

The decision of this Court is explained as follows:

Of the cargo on board, the salt beef was purchased in America by the Russian merchant Demby through the Ebiky Company, of Shanghai, to the order of Major-General Dessino, of the Russian Army, who is residing at Shanghai and assisting hostile operations of the enemy. This is evident from the contracts and letter of authorisation found in possession of Alexander Georgevitch Boleman, supercargo of the steamship, and from the testimony given by the same Boleman. That the salt beef was consigned to Vladivostock, and that the consignee was the Russo-Chinese Bank, is also very clear from the letter given by the owner of the ship to the master, under date of January 2nd of this year, and from testimony of the master, Knowlton, and the above-mentioned Boleman. Now Vladivostock is a port which Russia used as a

base of operation from the beginning of the Russo-Japanese War, and is an important commissariat station. The consignee of the goods, too, is the Russo-Chinese Bank, which has an intimate connection with the enemy's Government in its Far East policy. Thus it is clear that the salt beef in question was intended for military use at the place where it was consigned, and consequently it is contraband of war. According to International Law, a ship which carries a cargo of contraband of war, knowing it to be such, is forfeitable, together with the cargo. Now it will be seen from the testimony of Boleman and from the two above-mentioned documents found in his possession, that the said Boleman was intrusted with the duties of examining and buying salt beef in America, which was freighted in the ship under consideration, and that the owner of the ship appointed the said Boleman supercargo of the ship, knowing all the circumstances. So that the owner of the ship in question must be considered as having knowingly attempted to transport contraband of war and of giving benefit to the enemy. Moreover, that the owner of the ship under consideration tried to land the cargo at Vladivostock, a base of the enemy, with deceitful means by hiding the port of destination, is evident from the fact that the clearance and health certificates were obtained, when leaving Seattle, on the pretence that the ship was bound for Shanghai, notwithstanding the fact that he gave to the master a letter designating the port of destination as Vladivostock, as mentioned before; that the freight bill which is to be signed by the consignee was torn off at the part where the place of destination was mentioned; and that not only a false entry, as bound for Shanghai, was made in the ship's journal and its duplicate, deck journal, and engineer's journal, but an attempt was made to reach Vladivostock via Soya Strait, taking the route considered most dangerous in winter, from wind, snow, ice, etc., notwithstanding that there is a more convenient route, considering the season of the voyage, of going to the destination by the Strait of Tsugaru. From whatever point of view we consider the original decision condemning the ship, it is proper, and there is no reason for protest.

The decision of this Court is therefore as follows:

This protest is hereby rejected.

Given this 8th day of the 8th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

Case IX. *The Vegga.*

Decision published in the *Official Gazette*, Tokyo, of Sept. 25, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 10th of the 6th month of the 38th year of Meiji, by the Sasebo Prize Court, in the case of the Swedish steamship *Vegga*.

Petition No. I.

Decision.

Petitioners—The Vegga Steamship Co., Ltd., owners of the steamship *Vegga*, Sweden.

Representative—Charles Francis Benson, master of the steamship *Vegga*, Verberg, Sweden.

Attorneys—G. Akiyama, Counsellor at Law; T. Nishi, Counsellor at Law, 75, Yamashita Cho, Yokohama.

In the case of the Swedish steamship *Vegga*, the following decision has been given:

Text of Decision.

The steamship *Vegga* is hereby confiscated.

Facts and Grounds of Decision.

The steamship *Vegga* of this case is the property of the Vegga Steamship Company, Ltd., the petitioners, and is a merchantman flying the Swedish flag, employed for the transportation of goods. According to the order received from the owners' agents, Jacob Hesler & Co., of West Hartlepool, England, the ship took on board at Barry, England, 3615 tons of smokeless Cardiff coal received from Watts, Watts & Co., also agents of the owners, with the object of transporting the same to Vladivostock, Russia, and left port on the 10th of the 12th month of the 37th year of Meiji, pretending that she was bound for the port of Seban (?), Plonay Island (?). She was not furnished with a bill of lading, and as she went on she successively changed her destination from one port to another—first Seban, next Labuan, and then Hongkong. At the last-mentioned port she obtained a clearance as bound for Shanghai. On departure from Hongkong she entered in her log and engineer's log her true destination, Vladivostock, and without calling at Shanghai, she was steering straight for that port, when, on the 3rd of the 3rd month of the 38th year of Meiji, she was captured by the Japanese man-of-war *Nikko Maru*, in N. lat. 34° 10′ and E. long. 127° 43′, as a contraband carrier.

The above facts are clear from the statement submitted by Sub-Lieutenant H. Hisada, representative of the captain of the *Nikko*

Maru; from the testimony given by Charles Francis Benson, master; Christian Nordstrom (?), 1st mate; Karl Larson (?), 2nd mate, and Berndt Frederikson (?), chief engineer, all of the steamship *Vegga*; and from the certificate of the ship's nationality, the log-book, the clearances, the bills of health, the tonnage certificates, the receipts for lighthouse dues, etc.

The purport of the plea of the petitioners' advocates is as follows:

The steamship under consideration is a neutral ship, and the coal on board, which was shipped by Furness Withy & Co., Ltd., of West Hartlepool, England, is the property of Harris Dickson & Co., Ltd., of London, England. The ship and the cargo are thus owned by different persons. Moreover, the ship's destination to Vladivostock was clearly entered in her log-book, and if there are false statements of her destination in other papers, such statements cannot be considered as tricks contrived to evade capture by a Japanese man-of-war. The ship is not, therefore, liable to confiscation, even if it be assumed that her cargo was contraband; and for a stronger reason, she should not be confiscated, as the coal was not contraband, but ordinary goods destined to Vladivostock, the commercial port. For the above reasons, the ship under consideration should be released.

The gist of the opinion of the Public Procurator is as follows:

That the coal on board this ship was contraband admits of no doubt. Moreover, there is reason to assume the owners of the ship to be also the owners of the cargo, and the cargo was shipped by fraudulent means. The ship should, therefore, be confiscated.

After due consideration the Court concludes as follows:

It is recognised both in the rules and the usage of International Law that a vessel is liable to confiscation when she engages in the transportation of contraband goods, using fraudulent means, or when her owner is also the owner of the contraband cargo. The coal on board this ship being smokeless Cardiff coal, chiefly used by naval vessels and being consigned to Vladivostock, the only Russian naval base in the Orient, it is contraband of war intended for the enemy's military use. Moreover, the master stated that he was instructed at West Hartlepool by Jacob Hesler & Co. to see one Ginsburg, on arrival at his destination and to dispose of the coal, and that he learned at Hongkong that Ginsburg was at Vladivostock. From this it will appear that the destination of the coal to Vladivostock was already decided when it was shipped. Notwithstanding this, the ship, after leaving Barry, always named a way port as her destination. Especially at Hongkong she obtained clearance, pretending to be bound for Shanghai, where she had no intention of calling, and sailed directly towards Vladivostock. These acts were done for the purpose

of evading capture by a Japanese man-of-war, and consequently, it is evident that the ship transported contraband of war by fraudulent means. After leaving Hongkong, the ship's destination to Vladivostock was for the first time entered in the log and the engineer's log, but this single act is not sufficient to absolve her from the responsibility of the transportation of contraband goods by fraudulent means. Furthermore, the coal was shipped by a firm, agents of the owners, by the order of another firm, also agents of the owners, so that it may be inferred that it was the property of the owners themselves. Nor is there anything in the statements of members of the crew or in the documents found on board to show that there was a different owner for the cargo. The petitioners' advocates, by producing a power of attorney given by Harris Dickson & Co. and an alleged copy of the bill of lading, contends that there was a different owner for the cargo. But the power of attorney is nothing more than a statement of the firm of Harris Dickson & Co. that they were the owners of the cargo, and prove nothing. The alleged copy of the bill of lading was not found on board; nor does it contain the signatures of the parties concerned in their own handwriting. These documents cannot, therefore, be admitted, and it is proper to assume that the ship is owned by the same person who owned the contraband cargo. For the above reasons the ship should be lawfully confiscated, and the decision, as stated in the text, has been given.

Given this 10th day of the 6th month of the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, C. Minakami, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on Sept. 26, 1905.

The following decision was given on the 5th of the 9th month of the 38th year of Meiji, by the Higher Prize Court, in the appeal case of the Swedish steamship *Vegga*.

Decision.

Case No. LXXVII.

Petitioners—The Vegga Steamship Co., Ltd., Linham (?), Sweden.

Representative—Charles Francis Benson, master of the steamship *Vegga*, Varverg, Sweden.

Attorneys—G. Akiyama, Counsellor at Law; T. Nishi, Counsellor at Law, 75, Yamashita Cho, Yokohama.

In the case of the Swedish steamship *Vegga*, captured by the Japanese man-of-war *Nikko Maru*, on the 3rd of the 3rd month of the 38th year of Meiji, in N. lat. 34° 10′ and E. long. 127° 43′, the Sasebo Prize Court gave decision on the 10th of the 6th month of the same year, confiscating the said ship. Whereas, G. Akiyama and T. Nishi, attorneys for Charles Francis Benson, the representative of the petitioners, the Vegga Steamship Company, Ltd., have filed an appeal against the said decision, the case has been examined, and the following judgment is given, K. Tsuzuki and B. Ishiwatari, Public Procurators of the Higher Prize Court, taking part.

The main points of the appeal stated by G. Akiyama and T. Nishi, attorneys for the petitioners, are:

The decision given by the Sasebo Prize Court on the 10th of the 6th month of the 38th year of Meiji confiscating the steamship *Vegga* is unreasonable, so it should be cancelled and judgment releasing her should be given for the following reasons:

(1) This ship belongs to different owners from those of her cargo, and no fraud was committed by her. Therefore, the ruling of the original court that this ship and her cargo belong to the same owner and that she took the cargo on board and transported it by fraudulent means is unreasonable.

(2) The original Court maintained that this cargo, being Cardiff coal chiefly used by navies and being consigned to Vladivostock, the only Russian Naval base in the Orient, it was contraband of war intended for the enemy's military use. But Vladivostock is not only the Russian port but is also her only commercial port in the Orient, and it is the trading place where commercial and industrial business is undertaken by different nations. Hence, it is improper to deem coal consigned there as war material, simply because the place is a naval port. It is a conspicuous fact that Cardiff coal is used not only by navies, but also widely used for commercial, industrial and other purposes. Hence, when goods useful both in war and peace are transported to a place like Vladivostock which has a dual character, *i. e.*, naval and commercial, it would agree with the rules and usages on International Law to hold, following the precedent of the *Neptunus* case, that the goods were transported to Vladivostock, the commercial port, and intended for peaceful purposes.

(3) The former decision held that since leaving Barry, this ship always named a way port for her destination and at Hongkong she obtained clearance pretending to be destined for Shanghai, where she had no intention of calling and sailed towards Vladivostock, and that as these acts were taken for the purpose of evading capture by Japanese men-of-war, it is evident that she transported contraband of war

by fraudulent means. But the reason this ship named a way port for destination after leaving Barry was in order to conceal from the crew her real destination, since they might object to going to Vladivostock. When the destination of Vladivostock was disclosed to the crew at Labuan, some of them insisted on leaving the ship, so she was obliged to discharge them and engage new men at Hongkong. The reason the clearance for Shanghai was obtained at Hongkong was because she was informed by her agents that clearance for Vladivostock could not be obtained, and so the name of Shanghai was given to the authorities. That the above acts were not done with evil intention of evading capture by Japanese man-of-war is clearly proved by the statement, "bound for Vladivostock," in the ship's log-book and the engineer's log-book. If she had really intended to avoid capture, she would have made a false statement in the said books also; for the false statement in her bill of clearance alone would not be sufficient to accomplish the fraud, when the other papers contained the true statement. Hence, these acts cannot be regarded as fraud, in the meaning of International Law.

(4) The original Court adjudged the cargo of this ship to be the property of her owner on the ground that it was loaded by the order of his agents. But the prize officer's report as to the circumstances at the time of capture contains the following remarks: "The master's wife said, nobody having asked her, that this coal belongs to the same owner as the coal loaded in the *Sylviana*; subsequently I asked the master about the above fact. He denied it at first, but finally admitted it as true," and, "the bill of lading was not found among the ship's papers; I thought the master might have concealed the document, so I asked him several times about it; finally he stated that he received verbal instructions to give notice to one M. Ginsburg, on his arrival at Vladivostock." When the above remarks are considered it may be presumed that this cargo does not belong to the owner of the ship but to some other party. As to the relation between M. Ginsburg and Harris Dickson & Co., with regard to this coal, there is no necessity of giving particulars here, but seeing that the said company claimed its ownership and gave us, the attorneys for this petition, a power of attorney for filing a petition relating to the cargo, it is presumable that this cargo is not the property of the owner of the ship, but belongs to some other owner. That the loading of this ship was done by order of the owner's agents was quite an ordinary matter, for a shipping company like the petitioners may give orders to the master, themselves or through their agents, to take others' goods on board. Hence, it is unreasonable to presume that this cargo belongs to the owner of the ship. In short, this ship did not transport

coal, contraband of war, by fraudulent means, and the cargo is not the property of her owner and, therefore, she is not liable to confiscation. Even granting that the cargo is contraband, since her owner did not collude in its transportation and was ignorant of the circumstances, the ship should not be subjected to the same fate with the cargo.

The main points of the response of C. Minakami and S. Yamamoto, Public Procurators of the Sasebo Prize Court, are:

(1) Considering the purport of the statement made by the master when he was examined by the Councillor in charge of this case, and the fact that no bill of lading was found in the ship, nor anything to prove that this coal belongs to some other party, it must be inferred that it is the property of the owner's agents, Jacob Hesler & Co., that is, that it is owned by the same owners as the ship. The appellant produced, at the time of the formal proceedings in this case, a power of attorney and a copy of the bill of lading. But such documents may be made at any time between the parties interested, so it was quite reasonable on the part of the original Court to reject them and judge by the master's statement that this ship and her cargo belonged to the same owner.

(2) Although the original Court assumed that this ship transported contraband of war by fraudulent means, it did not hold that the loading was done by fraud. It appears from the order given to the master by Jacob Hesler & Co., to dispose of the coal after seeing Ginsburg at its destination, that Vladivostock was fixed from the first for the destination of coal. Nevertheless, after her departure from Barry, this ship intentionally named a way port for her destination and at Hongkong she obtained a clearance for Shanghai, where she had no intention of calling, but in reality she shaped her course directly for Vladivostock. These facts cannot be regarded as meaningless acts but must be held as the customary steps for evading capture by Japanese men-of-war.

For the aforesaid reasons, the rulings of the original Court are reasonable and the appeal is entirely groundless and should be dismissed.

The reasons of decision by the Higher Court are given, as follows:

(1) Vladivostock being an important Russian naval port, it is a conspicuous fact that the Russian Government has made it the base of her squadron, since the outbreak of the Russo-Japanese War, and a depot where arms, provisions, coal and other war materials have been abundantly accumulated, and that ordinary trade is almost entirely suspended there. So it is not unreasonable that the original Court regarded this coal, consigned to Vladivostock, as contraband of

war intended for the Russian forces. Moreover, being Cardiff coal of best selection, which is of high cost in the Orient and rarely demanded except by navies in war time, it is beyond any doubt that this coal was intended for the Russian Navy. The appellant argues that the precedent of the *Neptunus* case should be followed and the cargo be regarded as intended for peaceful purposes. But the nature of the cargo and the circumstances of its destination are entirely different from those in the *Neptunus* case, so it is needless to say that that case cannot be followed as a precedent.

(2) When, as in this case, the object of a ship's voyage is the transportation of contraband of war, according to International Law, the ship may be confiscated and this Higher Prize Court deems that penalty lawful. Besides, the whole cargo of this ship is contraband of war, and although it was well known from the time of her departure from Barry that she was bound for Vladivostock, the false destination of Seban (?) was mentioned at first. Later she changed her destination very often, but she always gave the name of a neutral port. At Hongkong, she obtained a clearance under the pretence of going to Shanghai where she had no intention of calling, and shaped her course directly to Vladivostock. The above shows that she attempted to transport Cardiff coal, contraband of war, to Vladivostock and her intention was to evade capture by false papers should she encounter Japanese men-of-war; that is to say, she resorted to fraudulent means in order to accomplish the transportation of contraband goods.

For the reasons given above (1st and 2nd), the decision of the original Court to confiscate the ship is quite reasonable, and as to the other points contended by the appellant, there is no need of giving any explanation.

Decision is given as follows:

This appeal is hereby dismissed.

Given this 5th of the 9th month of the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

CHAPTER V.

BLOCKADE.

Case I. *The George.*

Decision published in the *Official Gazette*, Tokyo, of Feb. 25, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 21st of the 10th month of the 37th year of Meiji, by the Sasebo Prize Court, in the case of the French steamer *George*.

Decision.

Petition No. 1.

Petitioner—August Vernon, French citizen, Tangku, China.
Advocate—J. Saito, Counsellor at Law, 14, 2-chome, Atago Machi, Shiba Ku, Tokyo.

In the case of the French steamer *George*, the following decision has been given:

Text of the Decision.

The steamer *George* is hereby confiscated.

Facts and the Grounds of the Decision.

The steamer *George*, now under consideration, is the property of the French citizen, August Vernon. The vessel flies the French flag and is employed for the transportation of freight and passengers in the seas of northern China, with Tangku as her usual home port. Sloss (?), the master of the ship, knowing that Port Arthur was being blockaded by the Japanese fleet, took in provisions and liquors with the object of transporting them to that port, and left Tangku on the 16th of the 8th month of the 37th year of Meiji under the pretence of going to Wei-hai-wei. On the 18th of the same month the steamer arrived outside Port Arthur, cast anchor 100 or 120 metres off shore, beneath a certain fort, and transshipped the whole of her cargo to a Russian steamer on the same day and the next (19th). She then took on board a Turk who came from Port Arthur, and

left the place. On her way to Tangku on the night of the 19th, the same month, she was captured about 5 miles southeast of Laotieh Shan Promontory by the Japanese torpedo boat No. 65 on blockading duty there. At that time the steamer had no cargo.

The above facts are clear from the statement and certificate as to money and valuables found on board the prize submitted by Lieutenant S. Fujimura, I. J. N., representative of the commanding officer of the torpedo boat No. 65; from the testimony given by Charles Gustave Sloss, the master of the steamer *George*, the mate Ma Liang, the boatswain Ku Yu Chi, the chief engineer Wang Fu Lin, and the passenger Nicola Vanwakides (?); and from the certificate of registration of the Tientsin Custom House, the certificate of nationality, etc.

The purport of the advocate's plea is as follows:

The steamer *George* is the property of a neutral person. She was not chartered by the enemy as transport, nor was she making a voyage under his licence, nor under the protection of his men-of-war. She was not, moreover, actually carrying any contraband of war to the enemy, nor was she guilty of any hostile action against the Japanese Empire. Furthermore, the blockade cannot be considered effective, as she was able to arrive at a certain place outside Port Arthur; and besides she was on her return voyage, after effecting entrance into the port, and not about to break through the blockade. She cannot, therefore, be considered guilty of blockade running. For the above reason, the advocate requests her release.

The gist of the opinion of the Public Procurator is as follows:

The steamer under consideration is guilty of blockade running as it was a conspicuous fact that the blockade was actually and effectively maintained at that time. He, therefore, requests that the vessel be condemned.

After due consideration the Court concludes as follows:

The advocate says that the blockade outside Port Arthur was not effective at the time of the capture of the steamer under consideration and, consequently, she cannot be said to be guilty of blockade running. But there is no doubt as to the fact that the blockade of the southern coasts of Liaotung Peninsula was effectively enforced, not only at the time of the capture of the vessel, but ever since the declaration of blockade was made by the Commander-in-Chief of the Japanese Combined Fleet on the 26th of the 5th month of the 37th year of Meiji; and the steamer under consideration, which had made the above mentioned voyage to a certain place outside Port Arthur without any proper cause, had clearly violated the blockade. And as it is a recognised rule of International Law that a vessel which is guilty of

blockade running shall be liable to confiscation without ascertaining any other facts, there is no need of examining the advocate's other arguments. The decision as stated in text is, therefore, given.

Given this 21st day of the 10th month of the 37th year of Meiji at the Sasebo Prize Court, the Public Procurator, C. Minakami, being present.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Sasebo Prize Court.

Case II. *The Fuping.*

Decision published in the *Official Gazette*, Tokyo, of Dec. 12, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the German steamship *Fuping* and her cargo.

Decision.

In the case of the capture of the German steamship *Fuping* and her cargo, the opinion of the Public Procurator, C. Minakami and S. Yamamoto, has been examined and the following decision given:

Text of the Decision.

The steamship *Fuping* and the goods on board of her, as mentioned in the annexed list, are hereby confiscated.

Facts and the Grounds of the Decision.

The steamship *Fuping* now under consideration is the property of the German company Telge & Schroeder at Tientsin, China, and is a merchantman flying the German flag and employed for the transportation of passengers and freight. The master of the ship, Frank Gray, knowing that Port Arthur, China, was blockaded by the Imperial navy, loaded the ship with arms, ammunition, and provisions, consigned by the owner, by deceitful means, to Port Arthur; took on board also a Russian army officer in active service, Captain Easily Yulievitch Eggart (?); and left Tangku on the 8th of the 10th month of the 37th year of Meiji, ostensibly for Chefoo, China, but really with the purpose of reaching Port Arthur. On the 11th of same month, the ship transshipped at sea 5 miles south of Rocky Point, China, from two junks, certain Russia-made boots and provisions, also consigned by the owner of the ship to Port Arthur. The ship, now fully

laden with the cargo as mentioned in the annexed list, left the place at about 2 p.m. the same day. The next day, the 12th, at about 9 a.m., while she was proceeding to Port Arthur, she was captured in N. Long. 120° 55′ and E. Lat. 38° 34′, about 10 miles north of North Huangheng Island, by the Imperial torpedo boat *Shirataka*, on blockading duty there.

The above facts are clear from the statement of the boarding officer, Lieutenant M. Kawazoe; the certificate concerning transshipment of the crew; the testimony given by Frank Gray, the master; James Dakian (?), the 1st mate; Alexander Robertson, the chief engineer, and Washily Yulievitch Eggart, Captain in the Russian Army, passenger; and the log-book, certificate of nationality, diary of the master, clearance, and certificate of Colonel Ogorodonikoff of the Russian Army.

The gist of the opinion of the Public Procurator is that, as it was a conspicuous fact that the blockade of Port Arthur was actually maintained at the time of the capture, the ship under consideration, which was steering for the blockaded area, must be considered as violating the blockade. Consequently the ship and cargo ought to be confiscated.

After due consideration, the Court concludes that it is a general principle recognised in International Law that in case a blockade is actually maintained, a vessel lying near and proceeding for, the blockaded area, will be considered as violating the blockade, and is confiscable, together with her cargo, except that part of it which belongs to those who are innocent of such attempt. The fact cannot be questioned that the blockade of the coasts of the southern part of Liaotung Peninsula, proclaimed by the Commander in Chief of the Imperial Combined Fleet, on the 26th of the 5th month of the 37th year of Meiji, had always been maintained effectively; so that it is very clear that the ship under consideration, which was, as stated above, proceeding to Port Arthur, should be considered as having violated the blockade.

Concerning the cargo, not only must it be considered as belonging to the owner of the ship, but as there is no doubt of its destination to Port Arthur from the certificate of Colonel Ogorodonikoff, commanding the Russian force in Peking, which the owner of the cargo gave to the master of the ship, the owner cannot be said to be innocent of the attempt to run the blockade. Therefore, the ship under consideration and the goods on board of her, as mentioned in the annexed list, ought to be confiscated. As no petition has been filed in this case within the period advertised for by this Court, the decision as stated in the text has been given by request of the Public

Procurator, according to the last clause of Art. XVI. of the Prize Court Regulation, without going through the procedure of a trial.

Given this 6th day of the 12th month of the 37th year of Meiji, at Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

LIST OF GOODS.

Goods.	Number of Packages.
Boiled beef	1,026
Corned beef	1,085
Maize	1,043
Macaroni	720
Sausage	25
Salted beef	11
Medicals	35
Boots	98
Butter	18
Soap	61
Smoked ham	34
Tinned soup	5
Tinned vegetables	88
Sulphuric acid	38
Tea	1
Boxes of arms	8
Boxes of ammunition	1,091

Case III. *The Veteran.*

Decision published in the *Official Gazette*, Tokyo, of July 19, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 1st of the 3rd month of the 38th year of Meiji, by the Sasebo Prize Court, in the case of the German S. S. *Veteran*.

Petition No. I.

Decision.

Petitioner—Edward Eichwede, German subject, residing Chefoo, China.

Attorney—T. Ishibashi, Counsellor at Law, 41 Togiya Machi, Nagasaki.

In the case of the capture of the German S. S. *Veteran* decision is given as follows:

Text of the Decision.

S. S. *Veteran* is hereby confiscated.

Facts and Grounds of the Decision.

The S. S. *Veteran* of this case, being the property of Edward Eichwede, German subject, residing at Chefoo, China, engaged chiefly in the transportation of goods under the German flag was chartered at Tsingtau, China, on the 6th of November, 1904, by a German firm, Diederichsen, Jebsen & Co., of that place, and departed from Tsingtau at midnight of the 17th of the 11th month in the 37th year of Meiji, taking on board a full cargo of furs, to keep out cold, long boots, soap, tobacco, matches, medicines, provisions, etc., consigned to Port Arthur by the said firm, with the real intention of proceeding to Port Arthur, but pretending to the Chinese crew that she was bound for Chefoo, and without having perfect ship's papers. After she left Tsingtau, the master caused the ship's bell to be taken down, and its striking was then discontinued, to enable the steamer to accomplish her secret navigation; and when she came off Wei-hai-wei on the following night, the 18th, the course was suddenly changed to northeast. The boatswain, Wantejui, and others of the Chinese crew began to suspect that she was going to Port Arthur, and demanded of the master the reason of the change of course. The master, however, instead of giving them any answer, instantly assaulted and wounded them, and, threatening them with his pistol, still kept on the changed course. While the ship was proceeding northwest ½ west, i.e., in the direction of Port Arthur, she was captured in N. Lat. 38° 6′ 30″, E. Long. 122° 40′ 30″, at about 4 o'clock a.m. on the 19th day, by the Japanese man-of-war *Tatsuta*, which was on blockade duty.

The aforesaid facts are proved by the written statement of Lieutenant S. Ohara, acting prize officer; affidavits of Carl Edlar (?), master of the *Veteran*; Anton Mueller, first mate; Max Hase, chief engineer; Phillip Bluns, second mate; Wangteijui, boatswain; Wangshihyu, Wangchishan, quartermasters; Kutelei, head fireman; Haushing-ying, fireman; certificate of ship's nationality, originals of ship's log-book and engineer's log-book, report of inspection by the Councillor in charge of the case, as to the place where the ship's bell was taken down, opinion, given in writing, by K. Hirano, staff engineer, as to the damage in engine room and guide rod of the S. S. *Veteran*, and charter-party produced by the attorney for the petitioner.

The chief point of the statement made by the attorney for the petitioner is that this steamer should be released. As the reason of his statement he maintains that the object of the S. S. *Veteran*, when she departed from Tsingtau on the 17th day of the 11th month in the 37th year of Meiji, was to go first to Newchwang, next to call at Tientsin, and finally to proceed to Chefoo, the place of resi-

dence of the petitioner. This fact could be proved by the charter party between the petitioner, who is the owner of the steamer, and Diederichsen, Jebsen & Co., the bills of lading, etc. One part of the cargo was to be consigned to Baudinel & Co., Newchwang, one part to be sent to Telge & Schroeter, Tientsin, and another part to the Newchwang branch office of Diederichsen, Jebsen & Co., but none was consigned to Port Arthur. It appears that the steamer's course was a little too far to seaward and too much northeasterly, from the Shantung Promontory to Newchwang, but there was something wrong with her engine at that time, and her speed was thereby reduced; and, moreover, the steamer was in danger of being blown ashore by the northwest wind, so her course was purposely shaped more to the northward and eastward than the usual route to Newchwang. She did not, however, proceed toward Port Arthur. The Public Procurator's statement says that the words, "To Port Arthur," which were written on the cases of milk and soap, part of her cargo, are proof that she was secretly attempting to go to Port Arthur, but it was unreasonable to think that one who attempts to run the blockade would write such signs so as to prove his own offence, so the fact that there was the above writing may rather be taken as a proof that no ill intention was entertained by the steamer. The act of the master in having the ship's bell taken down after her departure was not for the purpose of secret navigation, but because the bell had the inscription "Thales," the former name of the ship. It was taken down simply with a superstitious idea of wishing her future good luck. The ship's papers in which Newchwang was designated as the port of destination were complete and all true, and there was no great inconsistency between the ship's destination, clearly shown in these ship's papers, and the course which the steamer took. Moreover, the steamer was captured about 60 or 70 miles off Port Arthur, which is too far to consider her as having attempted to pass the blockaded line and run into the prohibited zone. For the above reasons, the capture of the steamer was unreasonable, and even supposing that collusion had existed between the charterer and the master and they had an intention of blockade running, the petitioner, the owner of the ship, had no knowledge of it, and therefore the steamer should be released, although the cargo may be confiscated.

The principal point of the opinion of the Public Procurator is that the steamer attempted to run the blockade of Port Arthur, and it was a conspicuous fact that the blockade was at that time actually enforced, so the steamer should be confiscated.

After due consideration, the Court concludes as follows:

It has been admitted both in the rules and usage of International

Law that when a blockade is effectually maintained, should any ship, knowing the fact of blockade, proceed with the intention of getting into the blockaded zone, she shall be considered a blockade runner, and shall be confiscated, no matter whether her owner had knowledge of it or not; and there was no doubt in the present case that the blockade of the southern coast of Liaotung Peninsula, declared by the Commander-in-Chief of the Japanese Combined Fleet on the 26th day of the 5th month of the 37th year of Meiji, was at that time effectively enforced. It has been common practice of those who attempt to run blockade to prepare several kinds of false papers in order to escape capture. Among the papers of this steamer, the bills of lading are only for one part of the cargo, while there are some disagreements between the engineer's original log-book and its copy. Moreover, the papers relating to the cargo, which were produced by the attorney for the petitioner, do not correspond with the actual goods. All these papers cannot, therefore, be taken as legitimate documents. The attorney for the petitioner, giving reason for the steamer's not having taken the usual Newchwang route after rounding Shantung Promontory, states that the steamer's speed was reduced at that time on account of some defects in her engine, and moreover she was in fear of being blown ashore. However, when the statements of the Chinese who were working in the engine room at that time, the original of the engineer's log-book, and the other evidence, cited before, as to whether or not some defects existed in her engine are considered, not only the above explanation is inadmissible, but it becomes evident that she was captured while navigating to Port Arthur, after making a sudden turn to northeast off Wei-hai-wei. The fact that she was captured 60 to 70 nautical miles off Port Arthur does not prevent judging this steamer as having proceeded with the intention of running into the blockaded zone. As to other points contended by the attorney for the petitioner, the Court does not see any necessity of giving explanation except referring to several facts cited before.

For the above reason, the Court cannot but assume that the charterer and the master, in this case, knowing that Port Arthur was actually blockaded by the Japanese Squadron, attempted to run the blockade and smuggle cargo into that port.

The decision is, therefore, given as in the text.

Given this 1st day of the 3rd month of the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, C. Midsukami, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Sasebo Prize Court on the Same Case (about the Cargo).

Published in the *Official Gazette*, on July 29, 1905.

The following decision was given on the 1st of the 3rd month of the 38th year of Meiji, in the case of the cargo of the German steamship *Veteran*.

Petition No. II.

Decision.

Petitioner—Emeel Walkhoff, German subject, manager of Diederichsen, Jebsen & Co., Tientsin, China.

Petitioner—Welnell Gemy, German subject, manager of Diederichsen, Jebsen & Co., Tientsin, China.

Attorney—T. Ishibashi, Counsellor at Law, 41, Togiya Machi, Nagasaki.

In the case of the cargo of the German steamship *Veteran*, decision is given as follows:

Text of the Decision.

The goods mentioned in the annexed list, which were the cargo of the steamship *Veteran*, are hereby confiscated.

Facts and the Grounds of the Decision.

The goods of the present case, being the property of Diederichsen, Jebsen & Co., a German firm at Tsingtau, China, were loaded in the German steamship *Veteran*, a chartered ship of the above firm, and were despatched from the said Tsingtau at midnight, of the 17th of the 11th month in the 37th year of Meiji, consigned to Port Arthur. When the said German steamship *Veteran* was captured by the Japanese man-of-war *Tatsuta*, as a blockade runner, at 4 o'clock a.m. on the 19th of the same month, in N. Lat. 38° 6′ 30″, E. Long. 122° 40′ 30″, the said goods were captured together with the said ship.

The aforesaid facts are proved by the written statement of Lieutenant S. Ohare, acting prize officer, by the affidavits of Karl Edlar, master of the *Veteran*, Anton Muller, first mate, Max Hase, chief engineer, Phillip Bluns, second engineer, Wangteijui, boatswain, Wangshihyn, Wangchishan, quartermasters, Rutelai, head fireman, certificate of the ship's nationality, originals of the ship's log-book and engineer's log-book, opinion given in writing by K. Hirano, Staff Engineer, as to the damage in engine room and guide rod of the steamship *Veteran*, and charter party produced by the attorney for the petitioners.

The chief point of the statement of the attorney for the petitioners is that all the goods of this case should be released. The attorney for

the petitioners, giving reason of his statement, says that the object of the steamship *Veteran*, on her departure from Tsingtau, on the 17th of the 11th month in the 37th year of Meiji, was to go first to Newchwang, next to call at Tientsin and finally to proceed to Chefoo. This fact is proved by charter party between the ship owner and the petitioner, bills of lading, etc. One part of the cargo was to be consigned to Bandinell & Co., Newchwang, one part to be sent to Telge und Schroeter, Tientsin, and other part to the Newchwang branch of Diederichsen, Jebsen & Co., but none was consigned to Port Arthur. It appears that the steamer's course was a little too far seaward and too much northeasterly from the Shantung Promontory to Newchwang, but there was something wrong in her engine at that time and her speed was thereby reduced and, moreover, the steamer was threatened to be blown ashore by a northwest wind, so her course was purposely shaped more to the northward and eastward to Newchwang. She did not, however, proceed towards Port Arthur. The Public Procurator's statement says that the words, "To Port Arthur," which were written on the cases of milk and soap, part of the cargo, are proof that she was secretly attempting to go to Port Arthur. But it is unreasonable to think that one who attempts to run the blockade would write such signs as to show his own offence, so the fact that there was the above writing may rather be taken as a proof that no ill intention was entertained by the steamer. The master's act in having the ship's bell removed after her departure was not for the purpose of making secret navigation but because the bell bore the inscription of "Thales," the ship's former name. It was taken down simply with a superstitious idea to wish her future good luck. The ship's papers, in which Newchwang was designated as the port of destination, were complete and all true, and there was no great inconsistency between the ship's destination, clearly shown in these papers and her actual course. Moreover, the steamer was captured from 60 to 70 nautical miles off Port Arthur, which is too far to consider her as having attempted to pass the blockaded line and run into the prohibited zone. For the above reasons, the capture was unreasonable.

The principal point of the opinion of the Public Procurator is that the steamer attempted to run the blockade of Port Arthur, and it was a conspicuous fact that the blockade was actually enforced at that time, so the cargo of the present case, which had been loaded in that ship and sent out in order to be smuggled, should all be confiscated.

After due consideration the Court concludes as follows:

It has been admitted both in the rules and usages of International Law, that the goods loaded in the ship which commits the breach of blockade, are liable to confiscation, except when the owner of the

goods has no knowledge thereof. While it has been the common practice of those who attempt to violate blockades, to prepare various false papers in order to escape capture, all the papers of the steamship *Veteran* cannot be taken as legitimate, because the bill of lading is not for all the cargo but only for one part, while the engineer's original log-book differs in some points from its copy, and the papers relating to the cargo which were produced by the attorney for the petitioners, do not correspond with the actual goods. The attorney for the petitioners states, as the reason of the steamship *Veteran's* not having taken the usual Newchwang route, after rounding Shantung Promontory, that the ship's speed was reduced on account of the damage to her engine at that time and she was in fear of being blown ashore. But when the statements of the Chinese who who were at work in the engine room at that time, the original of the engineer's log-book and the before cited other evidences, as to whether some defects existed in her engine, are considered, not only the above explanation is inadmissible, but it becomes evident that she was captured while navigating to Port Arthur after making a sudden turn to the northeast off Wei-hai-wei. The fact that she was captured 60 to 70 miles off Port Arthur does not prevent the judgment of this steamer as having proceeded with the intention of running into the blockade zone. As to other points contended by the attorney for the petitioners, the Court does not see any necessity of giving explanation, except referring to facts concerning the vessel cited hereinbefore.

For the above reason, the Court cannot but assume that the charterer and the master, knowing that Port Arthur has actually been blockaded by the Japanese squadron, attempted to run the blockade and smuggle goods to that port. As it is evident that not only were the goods of the present case loaded in the ship which violated the blockade, but all of them belong to the charterer who attempted the breach of blockade, they should be entirely confiscated. The decision is therefore given, as in the text.

Given this 1st day of the 3rd month in the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, C. Minakami, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

List of Goods.

Consignor, Diederichsen, Jebsen & Co., Tsingtau; consignee, To order.

No. 1.	Fur	89 packages.
No. 2.	Fur made overcoats	130 packages.
No. 3.	Long boots	60 cases.

No. 4.	Cotton made trousers	40 packages.
No. 5.	Cotton made shirts	19 packages.
No. 6.	Salt beef	1859 barrels.
No. 7.	Salted vegetables	339 barrels.
No. 8.	Tea	300 cases.
No. 9.	Potatoes	379 bags.
No. 10.	Canned milk	325 cases.
No. 11.	Canned meat	1454 cases.
No. 12.	Tobacco	68 cases.
No. 13.	Cigars	3 cases.
No. 14.	Matches	78 cases.
No. 15.	Soap	1600 cases.
No. 16.	Drugs	13 barrels.
No. 17.	Drugs (not covered)	1 package.
No. 18.	Sulphuric acid	96 cases.
No. 19.	Medical apparatus	74 cases.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Sasebo Prize Court.

Case IV. *The King Arthur.*

Decision published in the *Official Gazette*, Tokyo, of July 28, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 9th of the 3rd month in the 38th year of Meiji, in the case of the British steamship *King Arthur*.

Petition No. I.

Decision.

Petitioner—Alonzo Albert Cox, British subject, 135 New Cross, Woller Road, London.

In the prize Case of the British steamer *King Arthur* the decision is given as follows:

Text of the Decision.

The steamship *King Arthur* is hereby confiscated.

The petition claiming the payment of damages and expenses is dismissed.

Facts and the Grounds of the Decision.

The steamship *King Arthur* of the present case is the property of the petitioner, Alonzo Albert Cox, a British subject, with her usual home port at Bombay, India, British territory, and has been engaged

in the transportation of goods under the British merchant flag. On the 8th day of the 11th month of the 37th year of Meiji she departed from Bombay, under the personal command of Cox, having on board 50,000 sacks of flour, his property, with the object of importing the same to Port Arthur, knowing that the port was actually blockaded by the Japanese Squadron, but ostensibly pretending to go to Newchwang, China. Having met a Russian warship at sea 5 to 6 nautical miles off Laotishan, Liaotung Peninsula, on the 12th of the 12th month, she was guided by the warship to Port Arthur, where she unloaded her cargo and took on board one Paury and two others, German merchants, who were at that place, and being intrusted on her own proposal with numerous letters of communication, left Port Arthur on the 19th of same month. On her way to Chefoo, China, after leaving Port Arthur, she was discovered about 12 miles from Chefoo by the Japanese man-of-war *Asagiri* on blockading duty, and was ordered to stop at about 11 p.m. the same day, and taken to Kuanglu Island of the Changshan Group, China. After that she was captured by the *Otowa*, one of the Japanese blockading men-of-war, at 8 o'clock a.m. on the 21st of the same month. She had no cargo at the time of capture.

The above facts are proved by the written statement and certificate as to money and valuables found on board the vessel made by Junior Lieutenant M. Kitamura, who acted for the captain of the Japanese man-of-war *Otowa*, affidavits of the Master Cox, 1st mate Tripred, 2nd mate Leck, 3rd mate Tarner, 1st engineer Phillips, 2nd engineer Johnson, 3rd engineer Cooper, steward Maurice, passengers Paury, Leesecke, Obelbeck, and Wenell, all of the steamship *King Arthur*; register of ship's nationality, log-book, engineer's log-book, clearance, manifest, certificate of capture given by the Russian naval authorities at Port Arthur, letters of communication intrusted to the master by residents of Port Arthur, and letter addressed to the master from Russian military officer Malchenco, requesting to take care of letters of communication.

The main points of the statement of the petitioner are: The steamer was captured by the Russian warship while navigating for Newchwang and taken to Port Arthur, and she did not enter that port in violation of the blockade. This fact is clearly proved by the certificate of capture given by the Russian naval authorities. Besides considering the fact that this steamer was not prevented by Japanese men-of-war either from entering or leaving Port Arthur, but navigated freely until she came off Chefoo, where she saw for the first time a Japanese man-of-war, the blockade of Liaotung Peninsula cannot be said to have been effective.

Even supposing that the blockade had been effective, and the steamer did violate it, now that the blockade of Liaotung Peninsula has been discontinued, before judgment in this case is given, the steamer ought to be released for the same reason given in the decision of the *Lisette* case, that when a blockade is discontinued, there is no need of punishment for the prevention of future offences. For the above reason, the petitioner requests the release of the steamer, together with all her tackle, and also the payment of loss and expenses incurred by the capture.

The main points of the opinion of the Public Procurator are: That the steamer of this case violated the blockade, and that as it is a conspicuous fact that the blockade was effectively maintained at that time, judgment condemning the steamer should be given, and the petition claiming the payment of damage and expenses should be dismissed.

After due consideration the Court concludes as follows:

It is a fact widely known to the world that the middle of December is the season when navigation to the port of Newchwang is yearly suspended. It is incredible that this steamer should have contrived the importation of a large quantity of flour to that port during this season of the year, when no definite person had given the order. Moreover, when the fact is considered that she sailed to a place 5 to 6 nautical miles off Laotishan, which is not the usual route to Newchwang, it is presumable that her destination was not Newchwang. Besides, notwithstanding the statement of the master that he anticipated the confiscation of his ship by the Russians until he obtained permission to leave Port Arthur, he took on board his ship four German merchants who were leaving Port Arthur, and accepted voluntarily to take charge of numerous letters, before the said permission was given by the Russian authorities. These facts show that the steamer's departure from Port Arthur after discharging her cargo was already arranged from the beginning, and that the departure was decided upon prior to the permission from the Russians had been given. Moreover, while it has been the established rule of International Law that a captured ship must undergo adjudication by a prize court, this steamer was not examined by any prize court or any other Russian authorities at Port Arthur; yet the master did not make any protest against the Russian measures. So the certificate of capture, given by the Russian naval authorities, referred to by the petitioner, is not trustworthy. It must be said, on the contrary, that the said certificate was given, partly to guarantee the safe departure of the steamer, and partly to prove the accomplishment of the importation. It is therefore evident that the steamer was not actually captured by the Russian man-of-war, but that she

came out of Port Arthur after having accomplished smuggling into that port.

The petitioner contends that as the steamer was able to enter and leave Port Arthur without any interruption the blockade could not have been effective. But it is an undoubted fact that the blockade of the southern coast of Liaotung Peninsula, declared by the Commander-in-Chief of the Combined Fleet, on the 26th of the 5th month in the 37th year of Meiji, was effectively enforced, and it is an established rule of International Law that the effectiveness of a blockade is not disproved simply by one or two ships passing the blockade line by evading the watch of the blockading squadron. The petitioner also quotes the decision of the *Lisette* case, and argues that as the blockade of Liaotung Peninsula had been discontinued before the decision of this case the vessel should be released. But that part of the decision of the *Lisette* case quoted by the petitioner was given as a supplementary reason for the release of the ship, which was captured after the blockade had been abandoned, and does not apply to this steamer, which was captured while the blockade was in force.

The present case would compare rather to the case of the *Charlotte Sophia*, which was adjudicated at the same time as the *Lisette* case, but in which the ship was captured while the blockade was in force, and was finally confiscated.

To sum up, this steamer violated the effective blockade of the Japanese Squadron, entering into and getting out of Port Arthur without any lawful reason, and it is therefore lawful, according to International Law, that she shall be confiscated, together with her accessories. The petitioner's claim of loss and expenses incurred by the capture of the steamer should be dismissed, as such matters are not in the jurisdiction of the prize court.

For the above reason the decision has been given as in the text.

Given this 9th day of the 3rd month in the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, S. Yamamoto, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Decision of the Higher Prize Court on the Same Case.

Published in the *Official Gazette*, Tokyo, on July 28, 1905.

The following decision was given on the 11th of the 7th month in the 38th year of Meiji, by the Higher Prize Court, in the case of the British steamship *King Arthur*.

Decision.

Case No. XLIII.

Petitioner—Alonzo Albert Cox, British subject, residing at No. 135 New Cross, Woller Road, London.

Attorney—S. Hatakeyama, Counsellor at Law, 18 Hirato Machi, Nagasaki.

In reference to the prize case of the British steamship *King Arthur*, which was captured by the Japanese man-of-war *Asagiri* at sea off Chefoo, China, on the 19th of the 12th month in the 37th year of Meiji, the Sasebo Prize Court gave decision on the 9th of the 3rd month in the 38th year of Meiji, to the effect that the steamship *King Arthur* be confiscated, and the petition claiming payment of damages and expenses dismissed; whereas the advocate Hatakeyama, attorney for the petitioner Alonzo Albert Cox, filed an appeal against that part of the above decision which says "the steamship *King Arthur* shall be confiscated," the case has been tried before this Court, K. Tsuzuki and B. Ishiwatari, Public Procurators of the Higher Prize Court, taking part, and decision is given as follows:

The main points and reasons of protest made by Hatakeyama, attorney for the petitioner, are:

(1) The steamer was captured by a Russian torpedo boat while navigating Newchwang and taken to Port Arthur, but she never violated the blockade. The ruling in the original decision that the petitioner, knowing that Port Arthur was actually blockaded by Japanese Squadron, departed from Bombay on the 8th day of the 11th month in the 37th year of Meiji, having on board, his own property, 500,000 sacks of flour, with the object of importing the same to Port Arthur, but pretending to go to Newchwang, China, and having met with a Russian warship at sea 5 to 6 nautical miles off Laotishan, Liaotung Peninsula, on the 12th of the 12th month, was guided by that warship to Port Arthur, and discharged there the said cargo; and the ruling that the steamer's departure from Port Arthur after her unloading was anticipated from the beginning, and was not decided upon only after permission had been obtained from the Russian authorities; these rulings have not been proved by any of the documents cited in the original decision, except the single fact that the master took on board certain German merchants, who were leaving Port Arthur, and at his own proposal took charge of numerous letters, this notwithstanding his statement in Court that he had expected the confiscation of the steamer by the Russians, until he obtained permission to leave Port Arthur. It is stipulated in Art. LXVI. of the Japanese Regulations Governing Captures at

Sea that in deciding whether a vessel is to be captured or not, the nature of the vessel, her equipments, cargo, and papers, the testimony of the master, crew, and others, etc., shall be taken into consideration. Moreover, it is a principle of International Law that the evidence in a prize case should only be taken from among her ship's papers, affidavits of master, officers, and those who were in the ship at the time of capture, and not from anything else, and that the burden of proof of the breach of neutrality rests with the captor. The decision of the original Court, however, placed the burden of proof on the opposite side, unreasonably taking the ship's papers as false, and made presumptions of fact not warranted by lawful proof, with the previous assumption that the appellant was an offender. This decision is, therefore, unreasonable, being not only in opposition to the stipulation of the regulation governing Captures at Sea and the principle of International Law, but to the principle of ordinary justice.

(2) The decision maintains that, as the middle of December is the season when navigating to Newchwang is yearly suspended, it is incredible that importation of a large quantity of flour should have been contrived at that time of year. But the steamer departed from Bombay on the 8th of the 11th month, and she could have easily arrived at Newchwang before the middle of December, if her engine had not been damaged during the voyage, and its repair had not caused some delay. And even with that delay, she was seized by the Russian man-of-war on the 12th of the 12th month. It is therefore groundless to assert that it is incredible that the steamer should have contrived to import the cargo to Newchwang, knowing that navigation is suspended during that season. Besides the quantity of flour to be imported to North China is vastly increasing year by year, and the flour loaded in this steamer was not in such extraordinarily large quantity as to lead one to suspect that it was not to be imported to Newchwang.

(3) The former decision says that as the steamer was 5 to 6 miles off Laotishan, which is not the usual route to Newchwang, it is presumable that her destination was not Newchwang. It is true that the course taken by this steamer was more or less apart from the usual route, on account of the damage to her engine and the consequent diminution of her propelling power, but, according to the chart, it is the direct route from Bombay to Newchwang, and it is quite proper for a merchant ship to navigate that route. Therefore the explanation given in the former decision about this point is unreasonable.

(4) It was pointed out in the former decision that while it is

an established rule of International Law, that a captured ship should undergo adjudication by a Prize Court, this steamer had never been examined by any Prize Court nor by any other Russian authorities at Port Arthur, yet the master did not make any protest against the Russian measure . . . and concluded that, "it is therefore evident that the steamer was never captured by the Russian man-of-war, but she came out of Port Arthur after having accomplished smuggling into that port." The reason why this steamer was not examined by the Russian prize court or any other Russian authorities at Port Arthur was that the Russian Army and Navy at Port Arthur were in such a position at that time that it would have been merely a burden and disadvantage for them to confiscate this steamer instead of deriving any advantage by that step. It was a conspicuous fact that at that time the defence of Port Arthur could not long be sustained, so the Russian act of taking all provisions out of the ship and letting her out from the port, instead of confiscating such a small vessel, was the wisest step for them. On the other hand, the appellant hastily ran out from the port, to get away from the dangerous port as soon as possible. It is therefore a gross misconstruction of facts to allege that the appellant acted against International Law.

(5) The former decision states that this steamer violated the blockade, but, as explained before, the appellant never had any intention of violating the blockade. Even supposing that he had that intention, the blockade of Port Arthur was not effective at that time. In order to make a blockade effective, it is required by International Law that a standing squadron should keep watch so closely that a ship would incur evident risk as soon as she entered within the blockaded line. The Declaration of Paris of 1856 stipulates that an effective blockade must be maintained by actual force sufficient to prevent any ship from approaching the enemy's shore. If, therefore, the guarding warship be sent away, or the watch neglected for some other cause, the neutral may have freedom of navigation to that portion. The stipulation of Art. XXI. of the Japanese Regulations governing Captures at Sea is also founded on a similar basis. In the present case the former decision holds that this steamer met with a Russian warship at sea 5 to 6 nautical miles off Laotishan, Liaotung Peninsula, and, being guided by the latter, proceeded to Port Arthur. This is to say that the enemy ship was cruising in the open sea, going 5 to 6 miles away from the blockaded port, seized a merchantman and towed her to the port undisturbed, and sent her out again after unloading her in the port. Such cannot be said to have been a state of blockade. Besides, this steamer had not

seen any shadow of a Japanese warship since she left Port Arthur until the time when she was discovered by a Japanese man-of-war at sea only 12 nautical miles off Chefoo. Now, considering the above fact that the enemy's ship could have captured a merchantman by sailing far away from the port, and that the merchantman could have freely left the port and proceeded as far as off Chefoo in fine weather, it is evident that the blockade of Port Arthur was not at that time effective.

(6) When a ship violates a blockade she is liable to capture until her return voyage is completed. But that she is exempt from capture or punishment, should the blockade be abandoned before her capture, is clearly shown in the decision of the *Liscette* case, which says, "when blockade is abandoned, the punishment for the prevention of future offence cannot be inflicted." Although the steamship *King Arthur* was captured before the abolition of the blockade was publicly announced, she has not been tried by the Prize Court until after the abrogation of the punitive regulation. Now the object of a belligerent in capturing a neutral blockade runner is, as a rule, to enforce the blockade, and not to obtain goods or to punish the neutral owner. The steamship *King Arthur* was captured before the abolition of the blockade, but as her offence could not be repeated, she ought to be released just in the same manner as the ship which was captured after the abolition of the blockade.

The main points of the reply of S. Yamamoto, Public Procurator of the Sasebo Prize Court, are:

(1) The appellant, producing a certificate of capture given by the Russian authorities at Port Arthur, contends that the steamer was captured and taken to Port Arthur by a Russian warship, and her cargo, consisting of flour, was confiscated, but she never violated the blockade. It has, however, been the customary way of blockade runners going to Port Arthur to give a signal at sea off Laotishan, and enter the port guided by the torpedo boat which comes out to meet her. The steamship *George*, which was adjudicated at this prize court, also resorted to the above course. Had this steamer been really captured as the appellant states, she ought, by the rule of International Law, to have been examined by a Prize Court, and not even her cargo should have been confiscated without the decision of that court. But, according to the statement of the master, this steamer has never been examined by a Russian Prize Court nor any other Russian authorities. Nevertheless, she took on board some German merchants who were leaving Port Arthur, and accepted voluntarily to take charge of numerous letters, when she had not yet finished her unloading. These facts are evidently proofs that the master knew

previously that the steamer would leave the port as soon as her cargo was discharged. Inferring from the foregoing, there is no doubt that the above-mentioned certificate was nothing more than a device, partly to guarantee her safe departure and partly to prove the success of the smuggling. Moreover, the time when this steamer made her voyage was just the season in which Port of Newchwang is ice bound and navigation suspended. As this is a fact which any navigator should know, the master of this steamer must have known it. Then, it must be maintained that this steamer, while pretending to be bound for Newchwang, accomplished smuggling to Port Arthur, and was captured by the Japanese man-of-war on her outward voyage from the latter port.

(2) The appellant argues that as the steamer was able to go in and out of Port Arthur undisturbed, the blockade was not effective. The necessary condition of an effective blockade is that it shall be maintained by a force sufficient to prevent any ships approaching the enemy's coast, and it was a conspicuous fact that the blockade of the southern coast of Liaotung Peninsula, as declared by the Commander-in-Chief of the Japanese Combined Fleet, had always been effectively maintained by a sufficient force. The theory and precedents of International Law agree in the opinion that when a blockade is effectively maintained, the mere fact that certain adventurous ships succeed in passing the blockaded line with impunity, does not render that blockade void. It is therefore impossible to conclude that the Japanese blockade was ineffective simply because this steamer was able to get within the blockaded line, escaping the attention of the blockading ships or boats.

(3) The decision of the *Lisette* case having regard to a capture after the abolition of the blockade cannot be applied to the present case, which is a capture made while the blockade was in force.

For the above reasons, there is no ground for the appeal, while the former decision is clear in reasoning and entirely correct. The appeal should therefore be dismissed.

The Higher Prize Court explains the reason of its decision with regard to this case as follows:

The chief point of the first reason of appeal is to contend that the former decision did not show any lawful proof in determining that this steamer was not captured by the Russian warship, but had violated the blockade, except the single fact that she took on board certain German merchants, who were leaving Port Arthur, and also accepted voluntarily the charge of numerous letters, before her clearance was given. But it is clearly shown by the various evidence enumerated in the former decision, that the original court did not judge

this steamer a blockade runner by the above fact alone, so the first point of appeal is groundless. The commencement of suspension of navigation to Newchwang is annually between the 27th of the 11th month and the 6th of the 12th month. The date on which this steamer left Bombay was the 8th of the 11th month, and her full speed is recorded as about 7½ knots. So, even supposing she had not made any call and her engine was quite right, she would have required about 20 days to navigate about 5250 nautical miles, the shortest route from Bombay to Newchwang, and her arrival at Newchwang would have been after navigation to that port had been suspended. Such being the case, it is absolutely incredible that the steamer should have attempted to import a large quantity of flour to that port, when there was no definite party giving the order. When the above fact is considered conjointly with the fact that she was proceeding 5 or 6 nautical miles off Laotishan, which is not the usual route to Newchwang, it is presumable that the steamer's destination was not Newchwang. The appellant said in his written statement, giving reason of appeal, that her deviation from the usual route was caused by the diminution of the propelling power on account of the damage to her engine, but when he was examined in his capacity of master, he attributed that deviation to the current, inexperience of quartermasters, and inaccuracy of compass. Thus his statements contradicting each other cannot be trusted. Therefore, the assumption in the former decision that the destination of this steamer was not Newchwang is quite reasonable, and the second and third points of appeal are both groundless.

It is an established rule of International Law that a captured ship or her cargo should be brought to the examination of a Prize Court and no confiscation thereof should arbitrarily be made. So it is inconceivable that the Russian Navy would have dared to confiscate a neutral cargo without the adjudication of a prize court, even if the conditions when this steamer arrived at Port Arthur were so embarrassed, as the appellant states. Therefore, the appellant's assertion that this steamer was captured by the Russian warship but did not attempt smuggling to Port Arthur in violation of the blockade, is not trustworthy, and the fourth point of appeal is groundless. The blockade of the southern coast of Liaotung Peninsula was maintained by a force sufficient for the purpose since its declaration by the Commander-in-Chief of the Combined Fleet, on the 26th of the 5th month of the 37th year of Meiji, and many warships were always actually engaged in the blockade of the coast, stretching about 20 nautical miles in the direction of Port Arthur. On the day this steamer entered Port Arthur, three battleships, ten cruisers and nine tor-

pedo boats and destroyers, and on the day of capture, *i. e.*, of the 19th of the 12th month, nine destroyers, eight cruisers and one battleship were cruising at sea about 10 nautical miles off the coast, besides other ships cruising still farther off on blockade duty. Thus the blockade having obviously been effectively maintained, it cannot be said that this steamer did not run any risk in getting into Port Arthur; she could only have passed the blockade line by escaping the attention of the blockading ships. Therefore, the appellant's assertion that the blockade of the southern coast of Liaotung Peninsula was not effective, is in contradiction with the real fact and the 5th point of appeal is groundless. It is admitted by International Law that a ship, which has run a blockade, is liable to confiscation, provided she is captured during the continuance of that blockade, no matter whether the enforcement of the blockade is continued at the time of her examination at prize court or not, so the 6th point of appeal is also groundless.

For the above reasons, the decision is given as follows:

The appeal of this case shall be dismissed.

Given this 11th day of the 7th month in the 38th year of Meiji, at the Higher Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE HIGHER PRIZE COURT.

CHAPTER VI.

UNNEUTRAL SERVICES.

Case I. *The Industrie.*

Decision published in the *Official Gazette*, Tokyo, of Dec. 16, 1905.

Decision of the Sasebo Prize Court.

The following decision was given, on the 13th of the 7th month of the 38th year of Meiji, by the Sasebo Prize Court in the case of the German steamship *Industrie*:

Decision.

Petitioner—Jurgen Block, German merchant; Tsingtao, China.

Advocate—T. Ishibashi, Counsellor at Law, 41, Togiya Machi, Nagasaki.

In the case of the German steamship *Industrie*, decision has been given as follows:

Text of Decision.

The steamship *Industrie* is hereby confiscated.

Facts and Grounds of Decision.

The steamship *Industrie* is the property of the petitioner, and is a vessel employed as a salvage vessel and tug. She flies the German flag, with her usual home port at Hamburg, Germany. On the 8th of the 2nd month of the 38th year of Meiji, R. R. Macdelmidt (?), an American, proprietor of the Chefoo *Daily News*, residing at Chefoo, China, chartered the vessel at Shanghai for three months, at the rate of 1500 taels, Shanghai silver, a month, to employ her as a reporting vessel; and one Adolph Bannier (?), a German, was on board the vessel as war reporter with a monthly salary of 400 dollars. With the object of collecting information of the movements of the Japanese Fleet and reporting it to the Russian Government through Macdelmidt, the vessel left Shanghai on the 19th of the same month and proceeded toward Tsushima *via* the Saddle Islands, arriving at 40 miles southwest of the island, on the 3rd of the 3rd month (3 March, 1905). The vessel then returned to Shanghai, arriving there on the

13th. On the 15th she again left Shanghai and arrived at North Scene Island, Korea, on the 23rd. From the 23rd to the 27th (March, 1905), the vessel reconnoitred Quelpart and Anderson Island and the adjacent seas, and on the latter day, at dawn, she proceeded to Kadock Island. There she found Japanese men-of-war assembled about 5 miles to the eastward. After ascertaining their types, names, etc., she proceeded to Fusan, with the object of cabling the information to Macdelmidt. On her way to Fusan, the same day (27 March, 1905), at 3 p.m., she was captured by the Japanese man-of-war *Kasuga*, 2 miles south of Kadock Island, under the suspicion that she was engaged in collecting intelligence, with the object of benefiting the enemy.

The above facts are clear from the statement submitted by Lieutenant S. Oimikado, representative of the captain of the *Kasuga*; from the testimony given by Uddine (?) and Schuested (?), the master and first mate of the *Industrie*, and by Bannier, the reporter; and from the certificate of the ship's nationality, the contract of the sale of the vessel, the log-book, etc.

The purport of the plea of the petitioner's advocate is as follows:

According to the opinion of the Public Procurator, Macdelmidt, the proprietor of the Chefoo *Daily News*, a newspaper published under the protection of the Russian Government, chartered this ship to send her to the base of the Japanese fleet, under the direction of the reporter Bannier, with the object of collecting and reporting military intelligence to benefit of the enemy, but this is not fact. The reasons are as follows:

(1) The advocate denies that the *Daily News* is published under the protection of the Russian Government, as that is not the fact;

(2) The reporter, Bannier, is a temporary employee of Macdelmidt, and is nothing more than an ordinary newspaper reporter. As such, he was observing, impartially, the movements of both the Japanese and the Russian fleets, but he never watched the actions of the Japanese fleet, as a spy of Russia;

(3) The owner of the ship did not let her, to be used as a scouting vessel in the interest of Russia. Moreover, allegation of the Public Procurator, that there was concluded between the owner and the Russian Major General Dessino a contract of the sale of the ship, is groundless. That no such contract was concluded, may be inferred from several letters sent and received between the petitioner and Macdelmidt since the 13th of the 1st month of this year, and from the letter of the Kawasaki Dockyard, Kobe, dated the 34th of the 3rd month of this year;

(4) Newspaper correspondence is a work of public interest, and is not an unneutral act;

(5) Neutral ships should not be captured indiscreetly, except in cases of illegal transportation or blockade running. And in order to confiscate a neutral vessel, as guilty of an act benefiting the enemy, such an act must be an accomplished fact and there must be evidence to prove it. In the case under consideration, there is no such evidence. In a word, the ship under consideration is a harmless neutral vessel, and the advocate requests her release.

The gist of the opinion of the Public Procurator is as follows:

The ship under consideration is ostensibly an ordinary reporting vessel of a newspaper, but in reality, by a secret agreement between the Russian Government and Macdelmidt, she was engaged to scout and report the movements of the Japanese fleet. Therefore, she should be confiscated.

After due consideration the Court concludes as follows:

It is an unneutral act for a neutral person to watch one of the belligerents and report military secrets to the other, and International Law allows confiscation of vessels employed for such a purpose. The advocate alleges that the vessel under consideration was a reporting vessel of the Chefoo *Daily News*, that the newspaper was not under the protection of the Russian Government, and that the reporter on board the vessel was an ordinary newspaper reporter, who watched impartially the movements of both the Japanese and the Russian fleets. But the Chefoo *Daily News* is a small paper that appeared about the time of the outbreak of the Japanese-Russian War, having no means to send out its own reporting vessel. It is also a conspicuous fact, that the newspaper advocated the Russian cause and wilfully published in its columns, anything disadvantageous to Japan. Moreover, in the record of the 3rd examination, in answer to the question of the councillor in charge, whether he did not think it true that the *Daily News* was the organ of the Russian Government, Bannier said, "I did not know that before. But your question makes me think it is possible that the *Daily News* is receiving the protection of the Russian Government, as it is a small paper. At any rate, I cannot affirm that the newspaper is not receiving protection from the Russian Government." He also answered to another question as follows: "I think that my reports will be transmitted to the Russian Consul at Chefoo or Shanghai and thence to the Russian Government. I did not know that when I left Shanghai, and my intention was to report all that I saw not only of the Japanese but also of the Russian fleet. I think, therefore, all my reports give benefit to the Russian Government." From these statements of the reporter, Bannier, from similar statements of Uddine, master of the vessel, and from the fact that there was no vessel of the Russian fleet to be seen in the Eastern seas at

that time, it is proper to conclude that the Russian Government, taking advantage of the Chefoo *Daily News* being a neutral paper, subsidised it and sent the vessel, under the pretence of making war reports, to watch the Japanese fleet and to report military secrets, and that the petitioner knew of the scheme. In a word, it must be considered that this vessel was employed to watch the movements of the Japanese fleet and to report them to the enemy. Consequently, the vessel should be confiscated. As to the other points of the advocate's plea, there is no need to give any explanation. The decision as stated in the text has, therefore, been given.

Given this 13th of the 7th month of the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, S. Yamamoto, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Sasebo Prize Court.

Case II. *The Quang-nam.*

Decision published in the *Official Gazette*, Tokyo, of March 22, 1906.

Decision of the Sasebo Prize Court.

The following decision was given on the 28th day of the 11th month of the 38th year of Meiji, by the Sasebo Prize Court in the case of the French steamship *Quang-nam*.

Petition No. 1.

Decision.

Petitioners—Motte & Co., Saigon, Cochin China, French territory.

Representative—Mark Motte, French subject, residing in the above place.

Attorney—J. Magaki, Counsellor at Law, 17, Akefune Cho, Shiba Ku, Tokyo.

In the case of the French steamship *Quang-nam*, decision is given as follows:

Text of Decision.

This petition is hereby rejected.

Facts and Reasons.

The steamship *Quang-nam*, being the property of the China Coast Voyage Company, established at Paris, France, is engaged in the trans-

portation of cargo, having Saigon, Cochin China, as her home port, and flying the French flag. During the 4th month of the 38th year of Meiji, she took on board at Saigon, 800 cases of spirits, and left that place on the 23rd of that month. Calling at Kamranh Bay on the following day, the 24th, she delivered the above cargo to the Russian Second Pacific Squadron, which was lying at anchor there, and leaving the bay on the 26th, she sailed to Shanghai by way of Hongkong. At Shanghai, she took no cargo, except 130 tons of Cardiff coal for her own use, and left there on the 12th of the following month, pretending to be bound to Manila. Shaping her course between Formosa and the Pascadores, and then turning aside, she ran into Hatto Channel, and was captured by the Japanese man-of-war *Bingo Maru* on the 16th of the same month (May, 1905) to the northward of Kosei Island, as a ship engaged in the scouting service of the enemy.

The above facts are proved by the written statement of Captain S. Arikawa of the *Bingo Maru*, by the report of the visit made by Lieutenant K. Yasumura, by the written report of Assistant Engineer M. Tsubouchi on investigation of the engine room of the *Quang-nam*, by the affidavit of Paul Buisoo (?), master, Phillip A. Paory (?), first officer, Lieutenant Arnest Carochy (?), A. Castalogy (?), first engineer, Charl E. Pealamiss (?), second engineer, Leopold Brazy (?), third engineer, all of the *Quang-nam*, by the certificate of the ship's nationality, the ship's log, and the engineer's log.

The main points of the statements of the attorney for the petitioners are:

The steamship *Quang-nam*, being the property of the China Coast Voyage Company, located at Paris, France, runs between Saigon, Manila, Philippine Islands, Iloilo and Cebu. According to a charter entered into between the petitioners and the above company for the use of this ship in the transportation of goods, she was loaded at Saigon in the 4th month of 1905, with a cargo consisting of cases of spirits and proceeded to Kamranh Bay, where she delivered her cargo. On her voyage from Kamranh Bay to Manila by way of Hongkong and Shanghai, her engine was damaged, so she steamed into the Pescadore Channel with the object of finding harbour or some other ship to get assistance for repairs. She was, however, captured by the Japanese man-of-war on the 16th of the 5th month in the above channel. This ship is a neutral ship, and both the petitioners and the charterers are neutral subjects. Besides 130 tons of coal loaded at Shanghai, she took on board no contraband person or goods or letter, and the master and others did not know that the vicinity of the Pescadore Islands was the zone over which the "Protected Sea Area" had been proclaimed. Hence, this ship should not have been captured. The writ-

ten opinion of the Public Procurator shows that he regarded this ship as employed by the Russian Government and reconnoitring the defences of Japan and the movements of the Japanese fleet, on behalf of the enemy. But the master and other officers of this ship have hitherto served in merchant ships only, and the crew are all manual labourers, so it is evident that none of them was competent for such service as military reconnoitring. The statements of the master, first officer, and engineers, do not agree with each other in main points, but the fact that the engine of this ship was damaged on her voyage from Shanghai to Manila is proved by a report forwarded by the master to the French Consul at Nagasaki. Section 5 of Art. XXXVII. of the Japanese Regulations Governing Captures at Sea includes: "Vessels that engage in scouting or carrying information in the interest of the enemy, or are deemed clearly guilty of any other act to assist the enemy." According to the above, it is evident that there must be clear grounds on which to charge a ship with having acted in the interest of the enemy. Art. XXIII. of the International Regulations Governing Captures at Sea, of the Institute of International Law, held at Turin in 1882, regulated the capture of neutral ships and said, "when a neutral ship has participated or intended to participate in war, she may be confiscated." In the present case, it has not been ascertained that the master really acted with the object of benefiting the enemy. Therefore, this ship should be released, as she cannot be punished under above cited regulations.

The main points of the opinion of the Public Procurator are:

The charter party produced by the petitioners, being a private document which might be prepared at any time, cannot be trusted. Consequently, the petitioners are not parties entitled to bring this action, therefore, this petition should be rejected. On the other hand, it may be inferred that this ship was chartered by the Russian Government and was engaged in reconnoitring the defences of Japan and the movements of the Japanese fleet, for the benefit of the enemy. Hence, she is liable to confiscation.

After due consideration, the Court concludes as follows:

The attorney for the petitioners affirmed that this ship was chartered by the petitioners, Motte & Co., from the China Coast Voyage Company, and to prove his affirmation he produced a charter party between Motte and Ascory (?), the general agent at Saigon of the China Coast Voyage Company, and also referred to the power of attorney given him. But the charter party was not found on board the *Quangnam* at the time of capture, and being a private document which might be prepared at any time by the signing parties is not trustworthy. The power of attorney proves that Motte made a statement

in the presence of a notary, but it is no proof of the truthfulness of that statement. For the above reasons, these papers cannot be accepted. Besides them, there is nothing to show that the petitioners had any interest in this case. Hence, this petition should be rejected. Considering the fact that this ship took on board at Saigon, French territory, on the 22nd of the 4th month of the 38th year of Meiji, 800 cases of spirits, and sailing to Kamranh Bay, without any manifest or charter party, delivered the above cargo to the Russian Second Pacific Squadron lying at anchor there, and considering the statement of the master in his affidavit: "I think the Cardiff coal loaded in this ship came from the Russian coal depot." "This ship was chartered by the Russian Government," there is no doubt that this ship was chartered by the Russian Government. That she purposely took a difficult passage between Formosa and the Pescadores under the pretext of going to Manila, and ran into Hatto Channel, was evidently for the purpose of reconnoitring the defences near those islands, and the movements of the Japanese Squadron. Moreover, the fact that she took on board, at Saigon, Cardiff coal which she never before consumed, that she sailed from Kamranh Bay to Shanghai by way of Hongkong, without any cargo, and that, at Shanghai, no cargo was loaded, but 130 tons of Cardiff coal were taken on board when she had more than sufficient coal for her trip to Manila; all these facts must be regarded as means taken in order to accomplish the service of reconnoitring. When a ship, though neutral, has engaged in reconnoitring defences and the movements of a squadron for the benefit of the enemy, as this ship did, her confiscation is allowed by International Law. For the above reasons, this ship should be confiscated.

Therefore, the decision is given, as in the text.

Given this 28th day of the 11th month of the 38th year of Meiji, at the Sasebo Prize Court, the Public Procurator, C. Minakami, taking part.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Appeal carried to the Higher Prize Court, but rejected for the same reasons held by the Sasebo Prize Court.

CHAPTER VII.

RELEASED VESSELS.

Sect. I. Vessels Released by the Decisions of the Japanese Prize Courts.

Case I. *The Eastry.*

Published in the *Official Gazette*, Tokyo, on Feb. 16, 1905.

Decision of the Yokosuka Prize Court.

The following decision was given on the 12th day, 2nd month, 38th year of Meiji, by the Yokosuka Prize Court, in the case of the British steamship *Eastry*.

No. IX.

Decision.

The case of the steamship *Eastry*, captured by the Japanese man-of-war *Matsushima* in the Strait of Tsugaru on the 7th of the 2nd month of the 38th year of Meiji at 3 p.m., has been tried and the following decision given:

Text of the Decision.

The British steamship *Eastry* and 3725 tons of coal on board the ship are hereby released.

Facts and the Grounds of the Decision.

The steamship under consideration is the property of an Englishman, William John Schvierite (?), residing at West Hartlepool, Durham, England, and is registered at the same port. She is a steel steamship of 1924.24 tons, registered. The ship took in Cardiff coal, and under false papers transported the coal to Vladivostock in the latter part of the 11th month of the 37th year of Meiji. On her way back from that port, she was visited by the Japanese man-of-war *Tsushima*, on the 8th of the 12th month the same year, in the neighbourhood of the Straits of Tsushima. She then proceeded to Hongkong via Moji and Wusung. While staying at Hongkong she was chartered, on the 20th of the 1st month of the 38th year of Meiji, by Dodwell & Co.

of Yokohama, with the object of making a voyage from Muroran to Singapore. She left Hongkong on the 21st of the same month and arrived at Muroran on the 1st of the 2nd month.

At Muroran she took in 3725 tons of "Yubari" coal, consigned by the Hokkaido Colliery Railroad Company to Peterson Simons & Co. of Singapore, and 560 tons of the same coal for her own use, and sailed for Singapore on the 7th of the 2nd month at 8 a.m. The same day at 3 p.m., she was visited by the Japanese man-of-war *Matsushima* in the Strait of Tsugaru, in N. Lat. 41° 43′ and E. Long. 141° 5′, and was seized under the suspicion that she was carrying contraband of war to Vladivostock.

The above facts are clear from the statement concerning the captured ship *Eastry*, submitted by Lieutenant M. Taira, I. J. N., representative of the Captain of the Japanese man-of-war *Matsushima*; from the testimony given by W. T. Holsfield, master of the ship; by O. H. Poole, of Dodwell & Co., Yokohama; from the telegraphic answer of the Captain of the Japanese man-of-war *Matsushima*, addressed to the Councillor in charge of the case; from the certificate of nationality of the *Eastry*; ship's journal; charter party, etc.

After due consideration the Court concludes as follows: The ship had once forged her papers and transported contraband of war to Vladivostock. Moreover, she attempted this time to pass the Strait of Tsugaru, avoiding the central routes and taking one near the coast. Thus the captain of the *Matsushima* seized her, inferring that she had forged her papers and was attempting to transport contraband of war again to Vladivostock under the pretence of going to Singapore. The examination made by this Court of the papers found in the ship and of the parties concerned, however, has disclosed the facts that the ship was chartered this time by different persons from the ones who chartered her when she undertook the voyage to Vladivostock; that the coal which she took in was consigned by the Hokkaido Colliery Railroad Co. to Peterson Simons & Co. of Singapore; and that her destination was Singapore. Thus she cannot be considered this time as engaged in the transportation of contraband of war. The Court, therefore, has decided as stated in the text.

Given this 12th day of the 2nd month of the 38th year of Meiji at the Yokosuka Prize Court, after hearing the opinion of the Public Procurators of the Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE YOKOSUKA PRIZE COURT.

Case II. *The Rincluden.*

Decision published in the *Official Gazette*, Tokyo, of June 15, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 21st of the 5th month of the 38th year of Meiji, by the Sasebo Prize Court, in the case of the British steamship *Rincluden* and her cargo.

Decision.

In the case of the British steamship *Rincluden* and cargo, the following decision has been given, after examining the opinion of the Public Procurator, S. Yamamoto:

Text of the Decision.

The steamship *Rincluden* and her cargo are hereby released.

Facts and Grounds of the Decision.

The steamship *Rincluden* is the property of the Rincluden Steamship Company, Manchester, England, flying the British flag, and employed for the transportation of goods. On the 11th of the 1st month of the 36th year of Meiji, the master of the ship being authorised by the owner, contracted with the crew at Savona, Italy, to take in a cargo at a port of the Black Sea, and to transport it to Vladivostock, Russia. The ship left the port on the same day, and arrived at Nicolaiev on the 23rd the same month. She took in at Nicolaiev 8,078,272 pounds, that is, about 3607 tons of barley. With a bill of lading, in which the consignor was put as P. Hosner and the consignee "to order" at Tsingtao, China, the ship left Nicolaiev on the 26th of the same month, and arrived at Woosung, China, on the 12th of the 6th month, via Constantinople, Port Said, and Labuan. At Woosung the master received an order from the owner directing him to Strachan & Co., Kobe. Next day, the 13th, the ship left port, and on route to Kobe. On the 16th of the same month at 9.30 a.m. she was captured by the Japanese man-of-war *Sado Maru* in N. lat. 33° 10′ and E. long. 127° 37′ under the suspicion that she was transporting contraband of war.

The above facts are clear from the statement submitted by Junior Lieutenant T. Kimura, representative of the captain of the *Sado Maru*; from the testimony given by C. H. Laying and T. G. Sambridge, master and 1st mate of the *Rincluden*, and from the certificate of the ship's nationality, log-book, ship's journal, bill of lading, freight list, clearance from Shanghai, telegram of the owner addressed

to the master, letter of Dodwell & Co., Shanghai, addressed to the master, and telegrams of Strachan & Co., Yokohama, addressed to this Court.

The gist of the opinion of the Public Procurator is as follows:

The ship under consideration took in a cargo of barley, and left port with the object of proceeding to Vladivostock, and having been captured under the suspicion of carrying contraband she must submit. But, as the result of the examination of this Court, it has become clear that on the way she had altered her destination, and was making for Kobe. She was not, therefore, transporting contraband of war, and ought to be immediately released.

After due consideration, the Court concludes as follows:

At first the ship intended, under the contracts entered into by the master and crew, to take barley to Vladivostock, a Russian naval base, so that it is very clear that her first object was the transportation of contraband. Now it is a very common practice with vessels engaged in illegal voyages to falsify in their papers the true destination in order to escape capture. In the case under consideration, although it is clearly stated in the ship's journal, clearance from Shanghai, and letters and telegrams addressed to the master, that she was bound to Kobe, it is not conclusive enough to establish that she had altered her first object. The action of the *Sado Maru* in capturing the ship was therefore proper. But, according to the investigation made by this Court, there can be no doubt that the ship had actually abandoned her first object of going to Vladivostock, and was steaming for Kobe to deliver the cargo to Strachan & Co. The ship and her cargo should therefore be released, although her capture was lawful, and the decision, as related in the text, has been given.

Given this 21st day of the 5th month of the 38th year of Meiji, at the Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case III. *The Sishan.*

Decision published in the *Official Gazette*, Tokyo, of Nov. 10, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the British steamship *Sishan* and her cargo on the 26th of the 10th month of the 37th year of Meiji.

Decision.

In the case of the capture of the British steamship *Sishan* and her cargo, the opinion of the Public Procurators, C. Minakami and S. Yamamoto, has been examined, and the following decision given:

Text of the Decision.

The steamship *Sishan* and her cargo are hereby released.

Facts and the Grounds of the Decision.

The steamship *Sishan* now under consideration, belongs to Samuel Spitzer, a British subject, and is a merchantman registered at Hongkong, flying the British flag, and principally employed for transportation of freight. The ship took in cows, sheep, and other articles of provisions, and left Hongkong the 25th of the 9th month bound for Newchwang. She passed the offing of Port Arthur at night and entered Newchwang on the 2nd of the 10th month of the 37th year of Meiji.

She immediately tried to sell her cargo, and landed the cows and sheep, which were, however, taken back to the ship, she being unable to make a bargain. She then tried to obtain clearance for Chefoo; but before she could procure the certificate, she was suspected by the Imperial man-of-war *Tsukushi*, which was in port, visited, and captured in the port on the 7th of the 10th month, on the ground that she was engaged in the transportation of contraband of war. At the time of visit she did not produce her papers, which were actually in the ship, saying that they were then at the British Consulate.

The above facts are evident from the statement of Lieutenant K. Hara, representing the captain of the man-of-war *Tsukushi*; the testimony given by James Cartridge, master; John Plage (?), 1st engineer; David Fotheringham (?), 2nd engineer, and Robert Boucher (?), 3rd engineer, of the steamship *Sishan*; H. K. Struve, a passenger, and Adolph Spitzer, witness, and the bills of lading produced by the witness, etc.

The gist of the opinion of the Public Procurator is that the ship's papers were not kept in good order, and unless there were special reasons, the case might properly be construed as a continuous voyage in transportation of contraband of war. Her capture, therefore, is lawful.

But, as the result of the examination in the Prize Court, facts have been adduced showing that this case cannot be considered as a continuous voyage in transportation of contraband of war, and consequently the ship and cargo should be released.

After giving due consideration, the Court concludes that the steamship under consideration was purchased by Adolph Spitzer, as agent of his nephew, Samuel Spitzer, an American, and he, Adolph Spitzer, has full control of her. The cargo, which consists of provisions appropriate for military use, was purchased by the same Adolph Spitzer with the purpose of transporting the same to any place where it would command the highest price, and thus make the greatest profit. He took on board the ship his countryman, Struve, as supercargo, agreeing to give him part of the profit. The ship left Hongkong, bound for Newchwang, the said Adolph Spitzer having full power of direction and surveillance. At that time Port Arthur, being strictly blockaded by the Imperial Navy, the Russian forces there were short of provisions, and rumours were rife at Hongkong, Shanghai, etc., that the object of the ship was to smuggle the goods into Port Arthur, and these rumours even found their way into the newspapers. When the ship arrived at Newchwang, an attempt was made to dispose of the cargo, but it failed. Then, on the one hand, the ship tried to clear from Newchwang, pretending to go to Chefoo, which cannot be reached without passing the offing of Port Arthur. On the other hand, the supercargo, Struve, who had full power together with the owner of the cargo, once said at Bush Brothers, his agents, that the cargo would be transported to Port Arthur. The 1st mate of the ship, Chambers, too, said at the British Consulate at Newchwang, that the ship had attempted to run the blockade on her way from Hongkong to Newchwang, but did not succeed, and that they were going to make another attempt to reach Port Arthur under the pretence that they were going to Chefoo. Now the Imperial man-of-war *Tsukushi* sent an officer to the ship, and at that time of his visit the ship could not give satisfactory explanations for the imperfection of her papers, indefiniteness of her destination, and her having as master one who had no power as such. It was therefore a proper course for the *Tsukushi* to capture the ship in the belief that she had not abandoned the intention, which she had since her departure from Hongkong, of smuggling her goods into Port Arthur, and that under pretence of going to Chefoo, she was still trying to achieve her first object. As the result of the examination of this Prize Court, however, it is proper to consider that the ship at the time of her arrival at Newchwang had abandoned her first project of running the blockade and smuggling her goods into Port Arthur. For, even if she had had such a project, she did not carry it out, and actually made the voyage as mentioned in her papers; and on her arrival at Newchwang she attempted to sell her goods, and failing in this attempt, she tried to clear for Chefoo. So she cannot be

considered to have attempted to break through the blockade, nor can her case be construed as a continuous voyage in the transportation of contraband of war. Again, in trying to clear from Newchwang for Chefoo, she cannot, on that account, be held guilty of attempting to violate the blockade or of transporting contraband of war; for even if she had such intention, she did not begin to carry it out. Moreover, concerning the imperfection of her papers and lack of proper authority of her master, satisfactory explanations may be considered as given. Therefore, the ship and cargo ought to be released, notwithstanding that her capture was lawful, and the decision as stated in the text has been given.

Given this 26th day of the 10th month of the 37th year of Meiji, at the Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case IV. *The Hsiping.*

Published in the *Official Gazette*, Tokyo, on Aug. 11, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the steamship *Hsiping* and her cargo on the 7th of the 8th of the 37th year of Meiji.

Case No. XIV.

Decision.

In the case of the capture of the British steamship *Hsiping* and her cargo, the following decision has been given after examining the opinion of the Public Procurators, C. Minakami, S. Yamamoto, and Y. Hayashi:

Text of the Decision.

The steamship *Hsiping* and the goods on board of her, as stated in the annexed list, are hereby released.

Facts and the Grounds of the Decision.

The steamship *Hsiping* is a merchantman belonging to the Chinese Engineering and Mining Company, a British joint-stock company, with head office at Tientsin, China, flies the British flag, and her usual home port is Shanghai, China. She is employed for the transportation of passengers and freight. The ship left Shanghai on the 11th of the 7th month of the 37th year of Meiji, with a cargo consisting of lead, iron, silver coin, provisions, drinks, etc., and on her way via

Chin-huang-tao to Newchwang, which was at the time occupied by the Russians, she was captured by the Imperial man-of-war *Hongkong Maru*, at sea, about 6.5 miles to the north of Kaimin Island, off Shantung Promontory, China, on the 14th of the 7th month at 8 a.m., under the suspicion that she was transporting contraband of war.

The above facts are clear from the statement of the captain of the *Hongkong Maru*, T. Inoue; the report on the visit and search of the steamer *Hsiping*, by Lieutenant Y. Kamura; the testimony given by R. McFarlane (?), and E. B. Hayes, master and 1st mate of the ship; the testimony given by Pao-ming-chuan, and Wu-wei-ming, officers of the ship, and the certificate of nationality, bill of lading, and freight list of the ship.

The gist of the argument of the Public Procurator is that the ship under consideration having been captured on the high sea, and the greater part of the cargo, such as lead, iron, provisions, and drinks, being contraband of war, since they are destined to Newchwang, occupied by the Russians, the capture is lawful. However, the ship and part of her cargo should be released.

After giving due consideration, the Court concludes that the *Hongkong Maru* captured the ship at about 6.5 miles north of Kaimin Island, off Shantung Promontory; so that it is clear that the capture was made on the high seas. Moreover, the greater part of the cargo, consisting of lead, silver coin, iron, flour, spirituous liquors, timber, etc., being destined to Newchwang, occupied by the Russians, the action of the captain of the *Hongkong Maru* in capturing the ship, together with her cargo, suspecting them to be destined for the use of the enemy's army and navy, is lawful.

However, inasmuch as none of the contraband goods belong to the owners of the ship, the Chinese Engineering and Mining Company, and as there is no circumstance to prove that any deceitful means were used in taking in the contraband of war, it is proper to release the ship. Moreover, none of the goods mentioned in the annexed list being contraband of war from their nature, and none of them belonging to the owner of goods considered to be contraband, it is also proper to release these goods. Therefore, the decision, as stated in the text has been given.

Given at the Sasebo Prize Court this 7th day of the 8th month of the 37th year of Meiji.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case V. *The Saxon Prince.*

Published in the *Official Gazette*, Tokyo, on March 22, 1905.

Decision of the Sasebo Prize Court.

The following decision was given on the 16th of the 3rd month of the 38th year of Meiji by the Sasebo Prize Court in the case of the British steamship *Saxon Prince* and cargo.

No. XXX.

Decision.

In the case of the British steamship *Saxon Prince* and her cargo, the opinion of the Public Procurator, S. Yamamoto, has been examined and the following decision given:

Text of the Decision.

The British steamship *Saxon Prince* and her cargo are hereby released.

Facts and the Grounds of the Decision.

The steamship *Saxon Prince* is the property of the Prince Line Company of Newcastle-on-Tyne, England. She flies the British flag and is employed principally in the transportation of freight. She took in at New York, America, a cargo consisting of various kinds of goods and left port on December 11th, 1904. She first went to Singapore via St. Vincent, a Portuguese possession, and Durban, Natal, a British possession, and thence to Shanghai. At Singapore and Shanghai she landed part of her cargo. Her remaining cargo was the railroad material destined to Muroran, but she obtained at the British Consulate-General in Shanghai a clearance, stating her cargo as ballast and her destination as Muroran. She left Shanghai at about noon of the 7th of the 3rd month, this year; and on her way to Muroran, on the 10th of the same month at 12.45 a.m., she was captured by the Japanese man-of-war *Akashi* in N. Lat. 34° 13′ and E. Long. 130° 20′ on suspicion that she was transporting contraband of war to Vladivostock.

The above facts are clear from the statement produced by Lieutenant K. Miyano, I. J. N., representative of the captain of the *Akashi*; from the testimony given by the master of the steamship *Saxon Prince*, B. W. Jamson, the first mate, J. R. Gray, and the chief engineer, J. R. Smith; and from the certificate of the ship's nationality, ship's journal, bill of lading and freight list, clearance issued by the British Consulate General of Shanghai, etc.

The purport of the opinion of the Public Procurator is as follows:

From contradictions in her papers and the route she took, the sus-

picion that she was attempting a clandestine voyage to Vladivostock was very natural, and consequently her capture was lawful. But as the result of the explanation made at this Court, it became clear that her destination was Muroran. The ship and her cargo should, therefore, be released at once.

After due consideration the Court concludes as follows:

In the bill of lading of the railroad material found on board at the time of ship's capture the destination of the goods is put down as Shanghai; and in the clearance issued by the British Consulate-General at Shanghai, the cargo is put down as ballast. Moreover, when the ship was passing the Strait of Tsushima and was signalled by the man-of-war *Akashi* to stop, she did not respond to the signal; and she stopped only on being fired upon. Such being the facts, the action of the *Akashi* in capturing her, suspecting that she was carrying contraband of war to Vladivostock under the pretence of going to Muroran, was proper. But as the result of the examination held at this Court, the railroad material forming the cargo of the ship was to be supplied to the Hokkaido Tanko Tetsudo Kwaisha (the Hokkaido Colliery Railroad Company) by the Mitsui Bussan Kwaisha, and was shipped for Muroran by the United States Steel Manufacturing and Exporting Company of New York, America, to the order of the Mitsui Bussan Kwaisha. This is clear from the contract between the Hokkaido Tanko Tetsudo Kwaisha and Mitsui Bussan Kwaisha concerning supply of rails and appurtenances; from the invoice received by the Mitsui Bussan Kwaisha from the United States Steel Manufacturing and Exporting Company, the consignor of the goods under consideration; from telegrams of the Hokkaido Tanko Tetsudo Kwaisha and the American Trading Company of Yokohama addressed to this Court; and from letters addressed to the master, by the owner of the ship and his agent, concerning the voyage to Mororan. Therefore the ship and cargo ought to be released, notwithstanding that their capture was lawful; and the decision as stated in the text has been given.

Given this 16th day of the 3rd month of the 38th year of Meiji, at the Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case VI. *The Peiping.*

Published in the *Official Gazette*, Tokyo, on Aug. 16, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the Chinese steamship *Peiping* and her cargo the 11th of the 6th month of the 37th year of Meiji.

Case No. XV.

Decision.

In the case of the capture of the Chinese steamship *Peiping* and her cargo, the opinion of the Public Procurators, C. Minakami, S. Yamamoto, and Y. Hayashi, has been examined and the following decision given:

Text of the Decision.

The steamship *Peiping* and all the goods as mentioned in the accompanying list forming part of her cargo are hereby released.

Facts and the Grounds of the Decision.

The steamship *Peiping* is a merchantman flying the Chinese flag, belonging to the Chinese Engineering and Mining Co., Ltd., a British joint stock company with head office at Tientsin, China, having her usual home port at Shanghai, and employed for the transportation of passengers and freight. The steamship left Shanghai on the 15th of 7th month of the 37th year of Meiji, with a cargo consisting of iron, silver coin, provisions, drinks, etc., besides the goods mentioned in the annexed list, and on her way to Newchwang, which was then occupied by the Russians, was captured by the Japanese man-of-war *Hongkong Maru* in N. Lat. 37° 35′ and E. Long. 122° 23′, on the 17th of the 7th month at 10 a.m., under the suspicion of her being engaged in transportation of contraband of war.

The above facts are clear from the statement of Lieutenant T. Iwamuro, representing the captain of the *Hongkong Maru*; testimony given by A. Metaggart (?), master, Chang Liu-yung, compradore, and H. C. Atkinson, first mate of the ship; and the memorandum concerning the certificate of the ship's nationality, bill of lading, and freight list.

The gist of the opinion of the Public Procurator is that the capture having been made on the high sea, and the greater part of the cargo which consisted of iron, provisions, drinks, etc., being contraband of war, destined to Newchwang which was then occupied by the

enemy, the capture was lawful. But the ship and the goods mentioned in the list annexed should be released.

After giving due consideration to the case, the Court concludes that the man-of-war *Hongkong Maru*, having seized the steamship under consideration in N. Lat. 37° 35′ and E. Long. 122° 23′, that is, about 10 miles northeast of Wei-hai-wei, China, it is clear that the capture was made on the high sea; and as the greater part of the cargo consisted of iron, silver coin, rice, flour, various kinds of liquor, etc., destined to Newchwang which was then occupied by the enemy, the act of the *Hongkong Maru* in capturing the steamship with her cargo, suspecting these goods to be intended for the use of the enemy's army and navy, that is, contraband of war, was lawful. The ship, however, being a neutral vessel, carrying no contraband goods belonging to the ship's owner, and as it cannot be said that she used any deceitful means in the transportation of the contraband, it is proper to release her. The goods mentioned in the annexed list, forming part of her cargo, are not contraband, nor do any of them belong to the owner of the contraband on board; and consequently it is also proper to release them (the list is omitted). Under these grounds the decision as stated in the text has been given.

Given this 11th day of the 8th month of the 37th year of Meiji, at the Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case VII. *The Aggi.*

Published in the *Official Gazette*, Tokyo, on July 1, 1904.

Decision of the Sasebo Prize Court.

The following decision has been given by the Sasebo Prize Court on the Norwegian steamship *Aggi* and her cargo on the 25th of the 6th month of the 37th year of Meiji.

Case No. XIII.

Decision.

In the case of the capture of the Norwegian steamship *Aggi*, decision has been given after examining the opinion of the Public Procurators, S. Yamamoto and Y. Hayashi, as follows:

Text of the Decision.

The Norwegian steamship *Aggi* and her cargo are hereby released.

Facts and the Grounds of the Decision.

The steamship *Aggi* now under consideration is a merchant vessel owned by Christian Mickelsen & Co. (?), Norway, flying the Norwegian flag, whose usual home port is Bergen, Norway. She took in at Barrey, England, 4021 tons of coal belonging to the same company. She left Barrey on the 1st of the 4th month of the 37th year of Meiji, and arrived at Singapore, British dominion, on the 14th of the 5th month. In compliance with an order received from the owner of the ship, she left the same port on the same day, and arrived at Shanghai on the 25th of the same month. While at anchor off Gutzlaff Island she received an order from the owner of the ship, and left there on the 2nd of the 6th month, arriving at Nagasaki, Japan, on the 4th the same month. There she was captured, on the 7th the same month, by the Imperial man-of-war *Katsuragi*, on the ground that her papers were not in good order.

The above facts are clear from the statement of S. Sakamoto, captain of the *Katsuragi*; the testimony given by Sub-Lieutenant M. Yoshii and Halfdasi Olsen, master; Hans Eidy, 1st mate, and Christian O. Neelsen, Chief Engineer of the *Aggi*, and the certificate of nationality, certificate of tonnage, and bill of lading of the ship, and the charter-party.

The gist of the opinion of the Public Procurator is that the capture of the ship now under consideration, on the ground that her papers were not in good order, is lawful; but that as there is not sufficient evidence to show that the coal on board of her was intended for the use of the Russian Army or Navy, the coal cannot be said to be contraband of war; and, therefore, the ship ought to be released with her cargo.

After giving due consideration to the case, the Court concludes that in the bill of lading, and also the charter-party, the port of destination is entered as Singapore, or according to order, and the real place of her destination is not clear. Moreover, although the master of the ship produced the above documents on demand of the Councillors of the Court, he refused to produce them to the Prize Officer. The ship does not carry a freight list. The act of the captain of the *Katsuragi* in capturing her, on the ground of irregularity in her papers and the suspicion of her carrying contraband of war, is therefore lawful. The ship, however, having arrived at Nagasaki from Shanghai on the 4th of the 6th month of the 37th year of Meiji, in pursuance of the order of her owner, and there being no reason to consider her as bound for the enemy's state, Russia, the coal on board of her cannot be considered as intended for the enemy's army

or navy, and consequently cannot be said to be contraband of war. It is proper, therefore, to release the ship with her cargo, and the decision as stated in the text is given.

Given at the Sasebo Prize Court this 25th day of the 6th month of the 37th year of Meiji.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Case VIII. *The Helmes.*

Published in the *Official Gazette*, Tokyo, on March, 15th, 1904.

Decision of the Sasebo Prize Court.

Decision.

In this case of the capture of the Norwegian steamship *Helmes*, the written opinion of the Public Procurator has been examined and the following decision has been given:

Text of the Decision.

The Norwegian steamship *Helmes* and her cargo are hereby released.

The Facts and Grounds of the Decision.

The steamship *Helmes* now under consideration is the property of the Bruce Gold Chosterood Company (?), of Norway, flying the Norwegian flag, and is principally employed for carrying coal. She is registered in Norway, which is a neutral country, and her master, engineers, mates, and others are all Norwegians. She had been chartered by the Uriu Company, of Moji, Japan, agents of the Ginsburg Company, Russian subjects; took in 2100 tons of coal in two days, the 4th and 5th of the 2nd month of the 37th year of Meiji, and left the port of Moji on the 6th of the same month at 10 a.m., not knowing that war had broken out on that day between Japan and Russia, with the intention of steering directly to Port Arthur. On the way she met Japanese men-of-war off Port Arthur, in latitude N. 38° 24′ and longitude E. 121° 48′, on the 9th of the same month at 2 p.m., and being asked her cargo and her usual home port, she answered as was stated in her papers. She was then ordered to steer to Nagasaki, and obeyed the order, arriving at that port on the 13th of the same month at 8 a.m. Soon after her arrival at Nagasaki, at 8.45 a.m., Lieutenant Takamatsu, I. J. N., Divisional Commander of the Nagasaki Mining Corps, boarded and captured her.

The above facts are clear from the statement of Commander Tsukiyama, I. J. N., commanding the Nagasaki Mining Corps; the report of Lieutenant Takamatsu, Divisional Commander of the Mining

Corps; the testimony given by the master and first mate of the steamship *Helmes*; the certificate of the ship's nationality; the clearance, dated the 5th day of the 2nd month of the 37th year of Meiji; the freight list, bill of lading, and extracts from the ship's log-book.

After due consideration of the case, the coal taken in by the steamship *Helmes* in question, is not from its quantity, destination, etc., for her own use, but must be construed as contraband of war to be supplied to the enemy's navy after arrival at Port Arthur. But, according to rules recognised in modern International Law, a neutral ship and her cargo are not liable to capture, even if that cargo is contraband of war, if the ship does not know the fact of the opening of hostilities. This is no more than the enforcement of the principle that the duty of neutrality originates with the knowledge (of the fact) of the opening of hostilities. In the case of the steamship *Helmes* now under consideration, there is no evidence that either when she left Moji on the 6th day of the 2nd month of the 37th year of Meiji or afterwards, she knew the fact that Russia and Japan had entered into the state of war or the fact that hostilities had begun between the two countries. She was first apprised of the opening of hostilities when she was ordered by an Imperial man-of-war off Port Arthur to steer for Nagasaki. And therefore the ship under consideration and her cargo are not forfeitable.

However, when the Japanese man-of-war seized the ship off Port Arthur, it was after the battles of Chemulpo and Port Arthur, that is, on the 9th day of the 2nd month of the 37th year of Meiji. Moreover, the ship had been chartered by a Russian mercantile company, and was carrying a large quantity of coal with the intention of reaching a Russian naval base. Under such circumstances, the capture of the ship was a proper measure.

Upon these facts and grounds the ship under consideration and her cargo are hereby released.

Given this 7th day of the 3rd month of the 37th year of Meiji at the Sasebo Prize Court.

(Signed) THE PRESIDENT AND COUNCILLORS OF THE SASEBO PRIZE COURT.

Sect. II. Vessels Released By Virtue of the Following Imperial Ordinance No. CCXXVIII.

"Promulgated on the 1st day of the 11th month of the 38th year of Meiji (Nov. 1, 1905)."

Vessels and their cargoes captured after the 5th day of the

9th month of the 38th year of Meiji are hereby, as a special favour, released.

Those released were as follows:

The Hans Wagner (German).
The Kow-loon (German).
The M. Struve (German).
The Arufrid (Norwegian).
The Barracouta (the United States).
The Centennial (the United States).

APPENDICES.

APPENDIX I.

SPEECH OF BARON KOMURA ON THE MANCHURIAN QUESTION.

The following is the official translation of the speech delivered by Baron Komura, Minister of Foreign Affairs, in the House of Representatives on the 23rd of May, 1904.

GENTLEMEN:

It is a great honour to me to make a brief statement before this House regarding the course of negotiations between Japan and Russia, from the commencement to their termination. These negotiations lasted for more than half a year and are of a most complicated nature. Now I will try to briefly explain to you, gentlemen, the main points of these negotiations.

When upon the sudden outbreak in North China of the Boxer troubles in 1900, the Powers sent forces to Chihli for the relief of their representatives and nationals, and were taking action in harmonious co-operation, Russia despatched a large army into Manchuria and finally took possession of the whole of that province. She repeatedly declared at the time that this despatch of troops was simply for suppressing the Chinese insurgents and was not for the purpose of conquest; that she was determined to respect the sovereignty and territorial integrity of China in Manchuria, and that consequently her occupation of that province, which was the result of inevitable circumstances, was intended to be merely temporary. Nevertheless, on more than one occasion she tried to induce China to conclude a treaty of a nature tending to impair China's sovereignty and incompatible with the treaty rights of the Powers. Accordingly, on each occasion the Imperial Government warned both Russia and China, and Russia finally concluded in April, 1902, a convention providing for the restoration of Manchuria. In accordance with the stipulations of the convention, Russia commenced to prepare for the restoration, and, in fact, a partial evacuation had already been effected, when in April last year there was a sudden change in her attitude and not only were the withdrawal of her forces from Manchuria and the restitution of the administration to China suspended, but also various additional conditions were demanded from China. This action is believed to have been due to divided counsels in Russian Government circles regarding the solution of the Manchurian question and to the subsequent ascendency of the party in favour of permanent occupation.

The development of affairs in Manchuria received the most careful attention of the Imperial Government. The maintenance of the independence and territorial integrity of Korea is of the utmost importance to the safety and repose of this Empire, and is, in fact, our traditional policy; while in case of the absorption of Manchuria by Russia, the separate existence of Korea would be constantly menaced and the firm establishment of the peace of the Far East would become im-

possible. The Imperial Government, therefore, having regard to the future well being of the Empire, deemed it necessary, for consolidating the peace of the Extreme East and for securing the rights and interests of the Empire, to open as soon as possible negotiations with Russia with a view to a friendly definition of the interests of the two countries in Manchuria and Korea, where those interests meet, and thereby to remove every cause of future conflict between Japan and Russia. The Japanese Government therefore instructed their representative at St. Petersburg on July 28th, 1903, to bring their wishes to the attention of the Russian Government and to request their concurrence therein. The Russian Government willingly assented thereto, and the Russian Minister for Foreign Affairs announced that he had obtained Imperial authority to open negotiations on the subject. Accordingly, on the 12th August last, the Imperial Government presented to the Russian Government, through their Minister at St. Petersburg, as the basis of negotiations, proposals which were substantially as follows:

1. Mutual engagement to respect the independence and territorial integrity of China and Korea.

2. Mutual engagement to maintain the principle of equal opportunity for the commerce and industry of all nations in China and Korea.

3. Reciprocal recognition of Japan's preponderating interests in Korea and Russia's special interests in railway enterprises in Manchuria, and mutual recognition of the respective rights of Japan and Russia to take measures necessary for the protection of the above-mentioned interests so far as they do not conflict with the principle of Art. I. and Art. II.

4. Recognition by Russia of the exclusive right of Japan to give advice and assistance to Korea in the interests of reform and good government.

5. Engagement on the part of Russia not to impede the eventual extension of the Korean railway into Southern Manchuria, so as to connect with the East China and the Shanhai-kwan-Newchwang lines.

About ten days after the presentation of the proposals, of which the above are the essential points, the Russian Minister for Foreign Affairs suddenly suggested the transfer of the seat of negotiations to Tokyo. The Imperial Government, however, not only from the consideration that the progress of the negotiations would be facilitated by conducting them at the Russian capital, but also in view of the changes brought upon the Russian administrative organization in Manchuria and the creation of a Viceroyalty of the Far East, were afraid that the transfer of the seat of negotiations to Tokyo would not conduce to a satisfactory understanding. They accordingly repeatedly objected to the proposed transfer, but the Russian Minister for Foreign Affairs was insistent, assigning as the reason for his attitude the Czar's contemplated trip abroad, etc. Again, when the Imperial Government requested the Russian Minister for Foreign Affairs to accept in principle our proposals as the basis of negotiation, he only agreed to take them in conjunction with the Russian counter-proposals as such basis. The Imperial Government, deeming it disadvantageous to delay any longer the opening of discussion, agreed at length to transfer the seat of negotiations, and requested the Russian Government to present as soon as possible their counter-proposals. It was not until nearly a month later, the 3rd October, that the said counter-proposals were presented.

In those counter-proposals Russia, while having no objection to engage to respect the independence and territorial integrity of Korea, declined to extend the same engagement to China, and so far from

consenting to recognise the principle of equal opportunity for the commerce and industry of all nations in that country, requested Japan to acknowledge Manchuria and its littoral to be entirely outside her sphere of interest. She further proposed various restrictions upon Japan's freedom of action in Korea; for instance, while recognising Japan's right to despatch troops, when necessary, for the protection of her interests in Korea, Russia demanded previous notice in case of such despatch, and she refused to allow Japan to use any portion of Korean territory for strategical purposes. She went so far, in fact, as to propose to establish a neutral zone covering the Korean territory north of the 39th parallel, that is to say, more than one-third of the entire Korean Empire.

But as the maintenance of the sovereignty and territorial integrity of China in Manchuria is absolutely essential to the preservation of the independence of Korea, and as such maintenance was none other than a principle which had been voluntarily and repeatedly declared by Russia herself, and, moreover, as it was considered necessary to keep uninjured the commercial interests of all the Powers concerned upon the strength of the Russian engagement to respect treaty rights, the Imperial Government decided to maintain to the end their proposal on that subject, and necessary amendments to other articles were also made; for instance, that the imposition of any restriction to Japan in sending troops to Korea should be struck out. A neutral zone, if it was to be created, should be established on both sides of the boundary line between Manchuria and Korea, to the same extent—*i. e.*, fifty kilometres on each side. Regarding these amendments, several interviews had taken place with Baron Rosen since the 6th October last, and as the result of repeated discussions, in which some of our amendments were accepted, while as to others no agreement was arrived at, our definitive amendments were presented to Baron Rosen on the 30th of that month, and the Russian Government were asked to consider them. Although we frequently pressed for an answer, the Russian reply was again greatly delayed, and it only reached us on the 11th December. This was the second Russian counter-proposal. If the regret of the Imperial Government at such delay was deep, their disappointment at the contents of the reply, when it was received, was still more profound, for in it the clauses relating to Manchuria were completely suppressed, thus restricting the proposed convention entirely to Korea, while on the other hand the original demands regarding the neutral zone and the non-employment of Korean territory for strategical purposes were revived. But the object of the convention was, as above stated, the removal of all causes of future conflict by a definitive settlement of all questions between the two countries at points where their interests meet, and if Manchuria were placed outside the purview of the arrangement, and a moiety of the problem were thus to remain unsolved, the result would plainly be at variance with the aims for which the negotiations were inaugurated. Consequently on the 21st of December last, the Imperial Government asked the Government of Russia to reconsider their position on the subject of Manchuria, and again requested, with respect to Korea, the suppression of the restrictions as to the employment of Korean territory, and they also proposed the entire deletion of the clause relating to a neutral zone, as it was considered that, if Russia would not agree to its extension into Manchuria, it would be only fair not to create it in Korea.

The Russian Government gave their reply on the 6th of January, in which they still adhered to their original proposals regarding Korea, and on condition that those proposals were accepted by the Imperial Government, they offered to agree to the insertion of a clause stipulat-

ing that Russia would not impede the enjoyment by Japan and other Powers of the rights and privileges acquired under existing treaties with China. This at first sight might seem to be a concession on the part of Russia regarding Manchuria, but in reality it was not so, for Russia made it conditional with certain propositions regarding Korea, to which Japan could never agree. Again no stipulations were to be made as to the territorial integrity of Manchuria and the above-mentioned clause unaccompanied by assurances concerning territorial integrity would be practically valueless. Accordingly the Imperial Government, recognising the absolute necessity of causing Russia to engage herself to respect the territorial integrity of Manchuria, and finding no margin for further concession in regard to Korea, decided to firmly insist upon their amendment, and once more requested, on the 13th January last, the reconsideration of the Russian Government. They subsequently instructed the Japanese Minister at St. Petersburg to repeatedly ask for a reply. The Russian Government, however, did not make answer, neither did the Russian Minister for Foreign Affairs give, in his interview with Mr. Kurino held so late as the 31st January, even an indication as to the date whereon the reply would be presented.

Upon the whole, while the Imperial Government invariably met Russia in a conciliatory and frank spirit, in the hope of arriving at a speedy solution of the situation by yielding to Russia's wishes so far as they could do so without impairing the vital interests of Japan, Russia always unduly delayed her replies, or proposed such amendments as were altogether inconsistent with the idea of an amicable settlement, thus making the situation more and more complicated. Besides Russia, while professing peaceful intentions on one hand, made on the other great naval and military preparations, despatching all her most powerful war vessels to the Extreme Orient and sending military reinforcements tens of thousands strong to Manchuria and neighbouring regions. An unusually great activity was shown by her in purchasing and transporting arms, ammunition, stores and coal to the same region, so that it was placed beyond the range of doubt that Russia had no sincere desire for conciliation, and only aimed to compel us to yield to her designs by force of arms. Especially towards the end of January the warlike activities of Russia were so far accelerated that the allowance by Japan of further procrastination would certainly have placed the Empire in serious danger. Although the Imperial Government entertained an extremely sincere desire for peace, yet, in the face of such circumstances, they could not avoid deciding, after a most careful survey of the situation, to break off the negotiations with Russia and to take all necessary measures for self-defence. Accordingly on the 5th of February they issued telegraphic instructions to the Japanese Minister at St. Petersburg to announce to the Russian Government that the Imperial Government had terminated negotiations relative to the proposed Russo-Japanese convention, and that they would take such independent action as they might deem best to defend and consolidate their menaced position and to protect their established rights and legitimate interests, and that they would sever diplomatic relations with Russia and withdraw their legation. In accordance with those instructions our Minister at St. Petersburg made the communication on the 6th February last.

Such is, gentlemen, a brief account of the negotiations with Russia. As for the details the document just presented to the Diet will afford you full information.

APPENDIX II.

THE MEMORANDUM OF THE SEVEN PROFESSORS.

The war of 1904–1905 was not a struggle between two nations, but in fact it was the fighting of a nation against a hostile Government. Japanese fought for their native land and their emperor, without a single exception, with a determination of sacrificing their lives, if need be. The Russians were not all in accord with the principles of their aristocratic and despotic government, whose aggressive policy caused the war, and were forced to fight for nothing more than to satisfy a desire of their ruler. When we met with several Russian prisoners during the war we asked them for what they were fighting. They did not explain the reason, and simply said they fought because they were obliged to come to the front. On the contrary, the Japanese understood the situation of their own country, fought for the sake of their country as well as for the sake of their own existence; that is the reason they went willingly to the front and fought to the death. Their comrades fell, the next marched into battle, and then the third marched into place; brothers went after brothers, and all were satisfied to die for their native land. Such was the Japanese loyalty and there is no doubt of their conquering the formidable enemy.

On the whole, Japan's success is not only the Japanese Government's success but the success of the nation, so we must admire the common soldier just as we admire Admiral Togo, and all must praise Japanese individuals just as we praise some of the civil officers.

It must be observed that some time before the war the Japanese people did not fully appreciate the real conditions of the Far East, and also did not discover the real intention of the Russian Government. Even eminent diplomatists and learned men insisted upon the Russo-Japanese Alliance at that time, and dreamed of the exchange of Korea for Manchuria, while Russia was eagerly increasing her forces in the Far East to take both of them. At that time seven professors in the Tokyo University endeavoured to bring this fact to light, and to explain that there remained no other means except to fight in order to keep perpetual peace in the Far East. At first people thought these professors to be mad, because they insisted upon confronting so formidable an enemy, of which all the world stands in awe. Sometimes the Japanese authorities tried to punish them but in vain, because they had a freedom of discussion. At last, finding that the condition was very serious, and that there was no time to hesitate, they sent a memorandum to the members of the Cabinet, insisting that war was unavoidable. It was time that the efforts of the professors had succeeded in informing all the Japanese people why they must fight, and to make up their minds to sacrifice their lives, and those of their kindred. It is not inappropriate to describe the résumé of the memorandum that appeared in foreign papers in Japan at the time, because it will serve as a study of the real phenomena of diplomatic history and will aid in understanding the courses of diplomatic questions at stake.

THE MEMORIAL OF THE SEVEN PROFESSORS.[1]

It has already been stated in these columns that on the 8th of June, 1903, seven professors of the Imperial University addressed to the members of the Cabinet a memorial on the Manchurian question. The memorialists have now published a document, their alleged reasons for doing so being that portions having already been published without their permission, and a wrong impression having thus been conveyed, they feel justified in making known the whole. The document sets out by insisting on the importance of not following a policy of drift and in not allowing occurrences to slip by. As illustrations the memorialists urge that, had the rendition of the Liaotung Peninsula been made the occasion for demanding of China a pledge that the region should never be alienated, there would not now be any Manchurian problem. Again, when Germany, with a very feeble force and without any assistance, seized Kiaochow, a determined protest on Japan's part would have completely changed the aspect of affairs. Finally, when an agreement was made as to the withdrawal of the troops from North China, Manchuria was not included in its scope, and thus the present complications arose. If the same policy of neglect be pursued now, China, Japan and other Oriental countries will never be able to raise their heads again, and an everlasting calamity will be brought upon this Empire. The professors then go on to insist that Russia's aggressive progress in Eastern Asia is continuous and uninterrupted, and the longer it is left unchecked the more difficult it will be to check. The only satisfactory point in the situation is that just at present Japan's armament is more or less superior to that of Russia in this part of the world. This superiority, however, will not last for more than a year. The details, being secret, are not published by the memorialists, but they claim to have fully investigated them. Russia cannot be supposed to have entire confidence at present in her ability to defeat Japan in war; nevertheless, she is showing her contempt for treaties; she is inciting the Manchurian free looter; she is sending troops under disguise into Korea; she is attempting to obtain leases of lands in the Peninsular Empire. If such is her conduct in these days of uncertain military preponderance, what may be expected of her when she feels herself altogether superior in the matter of armament? And if she becomes mistress of Manchuria, how can she be kept out of Korea; what will be her next objective? The sum of the matter is that if the Manchurian problem be not satisfactorily solved, neither will the Korean, and if not the Korean, then neither will the Japanese. This is the time. Japan has the position and she has the men. Some folks say that the utmost circumspection is required in foreign affairs; that the attitude of each power must be accurately determined beforehand. That is true. But in the present case, China's attitude is known. So is the attitude of Germany and France, for although they will not favour Japan, neither will they join Russia at the cost of having to face England. As for the United States, it merely wants the open door in Manchuria at present, and it will not take part in any struggle for the sovereignty of the district. Hence England alone remains to be considered. Her treaty of alliance finds her in an attitude of neutrality in case Japan is confronted by one Power only. If time is to be lost in further consultations with her, it will be very regrettable. The memorialists then deal with the policy of an exchange between Korea and Manchuria, which they condemn as totally unwise. They contend that the two problems must be treated inde-

[1] The *Japan Times*, June 28, 1903.

pendently. They further insist upon the lawlessness of Russia's failure to withdraw her troops, and point out that a mere transfer of her forces from one part of the region to another is in no sense a withdrawal.

The names of the signatories are:

Professors M. Tomii, H. Tomizu, T. Terao, N. Kanai, S. Takahashi, S. Nakamura, K. Onozuka.

APPENDIX III.

DIARY OF THE WAR BETWEEN JAPAN AND RUSSIA, 1904–1905.

February 6th.

Rupture of diplomatic relations with Russia.
Telegraphic instructions despatched to Mr. Kurino, Minister in St. Petersburg to withdraw.
Yesterday and to-day, instructions sent out to withdraw the Imperial Consulates at Odessa and Newchwang, and the Imperial Commercial Agency at Vladivostock.
The *Sai-yen* captures the *Ekaterinoslav.*
The *Hei-yen* captures the *Mukden.*

February 7th.

The *Tatsuta* captures the *Russia* in the Korean Sea.
The *Azuma* captures the Russian steamer *Argoon* in the Korean Sea.

February 8th.

Our Government sends a notification to the Powers of the rupture of the diplomatic negotiations with Russia.
Admiral Urin arrives at Chemulpo with his squadron.
At 11 p.m., our torpedo boats attacked Port Arthur and gave serious injury on the Russian warships *Tzesarevitch, Retvisan* and *Pallada.*
Mr. Mizuno, Consul at Chefoo, came to Port Arthur to call back Japanese residents, and returned to Chefoo on the 9th.
Mr. Iijima, Consul at Odessa, left that place for Vienna.

February 9th.

At 8.30 a.m., Admiral Togo attacked Port Arthur with his squadron and gave injury to the Russian warships *Pollara, Diana, Askold* and *Novik.*
The *Tatsuta* captured the *Nandjuria* off Port Arthur.
At noon the *Korietz* and *Variag* were ordered to leave Chemulpo. Fight ensued in which both the Russian warships were sunk.
The *Sungari* captured at Chemulpo.

February 10th.

Japan's Declaration of War published.
In the afternoon the *Nicholai* and *Mihael* captured in the Korean Sea. Later the *Alexander* captured in the Harbour of Izuhara.

February 11th.
Mr. Kurino, Minister in St. Petersburg, left the Russian capital for Berlin. (He returned to Japan on the 4th of May.)
Mr. Segawa, Consul at Newchwang, left that port for Japan.
The Vladivostock Squadron came out to the Japan Sea and fired upon and sank our merchant steamer *Nakonoura Maru*.
The Russian mine-ship *Yenisei* blown up at Talienwan by their own mine.

February 12th.
The Russian cruiser *Boyarin* injured by their own mine at Talienwan.
Our squadron attempted to seal Port Arthur by sinking vessels.
Mr. Kawakami, Commercial Agent at Vladivostock, left that port for Japan.

February 16th.
The *Nisshin* and *Kasuga* arrived at Yokosuka.

February 17th.
At 11 a.m., the *Katsuragi* captured the *Juriade* in the Harbour of Nagasaki.

February 18th.
Russian account of the diplomatic negotiations published.

February 19th.
The Chinese Government demanded the disarmament of the Russian gunboat *Mandjur*, anchored at Shanghai.

February 22nd.
The Russian Government sent notification to the Powers about her attitude on the Manchurian question.

February 23rd.
The Russian Squadron for the East under Admiral Virenius put back from the Red Sea for home.
Late at night our squadron again attempted to seal Port Arthur by sinking vessels.

February 24th.
Our torpedo boats attacked Port Arthur.

February 25th.
At 11 a.m., our squadron opened fire on Port Arthur and sank one Russian torpedo boat.

February 27th.
Agreement between Japan and Korea signed.

March 3rd.
Publication of our protest against the Russian account of February 18th and 20th.

March 6th.
The commander of the *Chiyoda* presented to the Emperor some of the prizes captured in the naval fight off Chemulpo.

March 8th.
A Reuter's telegram reported our bombardment of Vladivostock.
Ambassador Ito ordered to proceed to Söul to pay a friendly visit to the Korean King.

March 9th.
The Imperial Household subscribes Yen 20,000,000 towards the Exchequer Bonds.
The Prince Imperial and Prince Arisugawa appointed attachés to the Headquarters.

March 10th.
The fourth attack on Port Arthur.

March 22nd.
The fifth attack on Port Arthur.

March 23rd.
Count Katsura, Premier, and Baron Komura, Minister for Foreign Affairs, delivered speeches in the Lower House about the diplomatic negotiations with Russia.

March 26th.
Ambassador Ito and suite left Söul for Japan.
Our merchant ship *Han-yei Maru* sunk by Russians off te Miao-tao Islands.

March 27th.
The sixth attack on Port Arthur and its blocking by sunken vessels.

April 1st.
Ambassador Ito returned from Korea and gave his report to the Emperor.

April 9th.
An account published of the improper statement made by the Russian Minister for Justice at The Hague Conference.

April 10th.
Collision of Japanese and Russian scouts at the Yalu.

April 11th.
The seventh and eighth attacks on Port Arthur (begun).

April 13th.
Admiral Makaroff killed in naval fighting.

April 15th.
Completion of the attacks on Port Arthur started on the 11th.

April 17th.
The consular staff and police officers at Syong-jin left there for Gensan, together with Japanese residents.

April 18th.
Our Minister in Peking reported by wire the withdrawal of the prohibition placed on the export of bean-cakes, on the condition of their not being used for warlike purposes.

April 23rd.
Arrival of Mrs. Maggy from America.

April 25th.
Russians sank our merchant steamer *Goyo Maru* off Gensan.

April 26th.
Russians sank our transport *Kinshu Maru* off Mayan Do.

May 1st.
Our First Army occupied Kinliencheng and defeated the Russians at Homutang.

May 3rd.
Another attempt to block Port Arthur by sinking vessels.

May 5th.
A portion of our Second Army began to land on Liaotung Peninsula.

May 6th.
Our First Army pursued Russians to Fenghwangchenn and occupied it.
Our Second Army occupied Pulantien and cut off communication with Port Arthur.

May 8th.
Our Consular staff at Korsakoosk left there for Japan.

May 9th.
An agreement signed for floating a foreign loan of Yen 100,000,000.

May 12th.
The first sea-clearing carried out near Talienwan, and torpedo boat No. 48 sunk by a mine.

May 14th.
Reported that the First Army occupied Kuantien on the 7th of this month.
The second sea-clearing carried out near Talienwan and the despatch boat *Miyako* sunk by a mine.

May 15th.
The *Hatsuse* and *Yoshins* sunk off Port Arthur.

May 17th.
A portion of the Second Army occupied San-shi-li-pu, Kin-li-pu and Pei-cha-tun.

May 19th.
Landing at Takushan started.

May 20th.
Our combined squadron reconnoitred Port Arthur under enemy's fire.
Reported sinking of the *Bogatyr* of the Vladivostock Squadron.

May 23rd.
Floating of the Second Exchequer Bonds of Yen 100,000,000 published.

May 26th.
The Second Army occupied Kinchon.
Our fleet assisted the army by bombarding Kinchon.
The Second Army occupied Nanshan.
Admiral Togo announced the direct blockade of the south of Liaotung Peninsula.

May 27th.
The Second Army occupied Nankwanling and Liushutun.

May 30th.
Our fleet made the second reconnoitre of Port Arthur under enemy's fire.

June 3rd.
The Russian Commander of Port Arthur proclaimed martial law.

June 4th.

A detachment of the Talienwan Sea-clearing Fleet reconnoitred Peh-san-shan-tao.

The Russian gunboat *Glemiacity* sunk by a mine near Port Arthur. The *Gaidamak* also disappeared about the same time.

June 6th.

Forty-one mechanical mines have been discovered and exploded since the 3rd of this month.

Our four gunboats reconnoitred Port Arthur under the enemy's fire and received their shells.

The *Matsushima* reported to have built poles for wireless telegraphy at Chin-wang-tao.

June 7th.

Our detached fleet bombarded the coast of Kai-chan.

June 8th.

A detachment of the First Army defeated the enemy at Daitoryo and then occupied Hsin-yen in co-operation with the army from Takushan.

Another reconnoitre carried on under the enemy's fire.

1500 Chinese residents at Port Arthur left for Chefoo under permission.

June 10th.

The Fourth Destroyer Flotilla bombarded the enemy at Ying-cheng-tzu and Shuan-tai-kan.

The Second Destroyer Flotilla attacked and pursued four enemy's destroyers in the neighbourhood of Shao-ping-tao.

June 13th.

An explosion and consequent deaths and injuries took place in the mine-ship *Taihoku Maru.*

A torpedo flotilla reconnoitred Port Arthur under enemy's fire and laid mines.

The Russian Consulate at Chefoo reported to have erected poles for wireless telegraphy.

June 15th.

Our army captured fourteen guns, wounded the enemy's legionary commander, and killed their regimental captain.

A torpedo flotilla bombarded Shas-ping-tao in order to give assistance to our army's reconnoitres.

The *Novik* and ten other warships came out of Port Arthur.

The Vladivostock Squadron appeared on the Japan Sea, sank the *Hitachi Maru* and injured the *Sado Maru.*

June 16th.

Admiral Kamimura's Squadron pursued the Vladivostock Squadron.

The Naval Station of Takeshiki despatched a torpedo flotilla to get information about the accident of the *Hitachi Maru* and *Sado Maru.*

The Fourth Destroyer Flotilla exploded enemy's mines in the south of Lian-tie-shan.

Subscriptions to the Second Exchequer Bonds closed, the total subscription amounting to over Yen 300,000,000.

June 18th.

The Vladivostock Squadron appeared off Tokuyama.

Kamimura's Squadron came back southward in search of the Vladivostock Squadron, but in vain.

June 19th.

That the *Izumi Maru* had been sunk before the *Hitachi Maru* becomes certain.

On getting a report that the Vladivostock Squadron was in the Northern Sea, Kamimura's Fleet gave up its search and came back to the naval base.

June 20th.

Field Marshal Oyama appointed Commander-in-Chief of the Manchurian Army.

General Kodama appointed Chief of the Manchurian General Staff.

Field Marshal Yamagata appointed Chief of the General Staff and Commissary-General.

Major-General Nagaoka appointed Adjutant Chief of the General Staff.

Reported that over 100 survivors of the *Sado Maru* have arrived at Vladivostock by the Russian Squadron.

June 21st.

Enemy's two destroyers reported to have been sunk by a mine.

June 23rd.

Battle off Port Arthur with twenty-five Russian warships from that port. In this fight two Russian warships were lost, while our *Shirakumo* and *Chidori* sustained a little injury.

June 24th.

The Russian warships that were defeated in yesterday's fight escaped back into Port Arthur, one after another.

June 25th.

A report arrived of the new appointment of officers for the Russian Pacific Squadron and new warships.

June 26th.

A report arrived of a Russian loan of 800,000,000 francs having been taken up in Paris.

June 30th.

The Vladivostock Squadron bombarded the Japanese settlement at Gensan.

The *Sado Maru* arrived at the Nagasaki Dock-yard towed by the *Takasago Maru.*

July 1st.

The Vladivostock Squadron appeared at the Tsushima Straits.

July 5th.

The gunboat *Kaimon* sunk by an enemy's mine off Talienwan.

July 6th.

Field Marshal Oyama, Commander-in-Chief of the Manchurian Army, and his suite left Tokyo for the front.

A steamer of the Söul-Tsuan Railway Company captured by the Russians off Otaru.

July 9th.

The Sixth Torpedo Flotilla attacked and gave serious injury to the *Askola* off Port Arthur.

Russian warships came out of Port Arthur but were driven back by the Third Squadron.

Those Japanese ships that have been running between Pingyang and Chiunampo with the Korean flag flying, decided to fly the Japanese flag instead, in the future.

July 11th.

The Sixth Torpedo Flotilla sank an enemy's warship of the *Diana* type off Port Arthur.

The Russian volunteer cruiser *Smolensk* reported to have passed the Suez Canal with coal and arms on board in company with the *Petersburg* and *Orel.*

Correspondents of foreign papers granted permission to proceed to the front.

July 14th.

Two British steamers stopped and overhauled in the Red Sea by a steamer of the Russian Volunteer Fleet.

July 16th.

The Baltic Squadron reported to have left Kronstadt on the 2nd of this month.

July 17th.

The Russian volunteer cruiser *Smolensk* stopped the German steamer *Prinz Heinrick* in the Red Sea and seized mails for Japan.

Our warship captured the steamer *Peh-ping* of the Kaiping Iron Mine Company.

July 19th.

The German Government sent in a protest to Russia against the seizure of mails for Japan by the Volunteer Fleet.

The Russian gunboat *Chelumoletz* passed the *Bosphorus.*

July 22nd.

Three warships of the Vladivostock fleet passed the Tsugaru Straits.

Our merchant steamer *Takashima Maru* sunk by Russians.

July 23rd.

The Russian Government gave a reply to the protest of the British Government about the seizure of the merchant steamer *Malacca.*

July 24th.

Our torpedo flotilla attacked enemy's destroyers on the back of the Sensei promontory and sank three of them.

The Vladivostock Squadron sank the British merchant steamer *Knight Commander* off Idzu.

July 25th.

Our army occupied Tah-shih-Kias and Yingkao.

The Russian Government reported to have given to the German Government a declaration that a case like the seizure of the *Prinz Heinrick* should not be repeated.

The Vladivostock Squadron appeared off the Ommae Promontory.

July 27th.

A rumour prevalent that the Vladivostock Squadron appeared at a distance of 60 knots off the Tokyo Bay, and that the report of guns could be heard off Awa.

July 30th.

Orders of merit granted to the captain and other Englishmen of the *Hitachi Maru.*

August 3rd.

Occupation of Hai-cheng and Newchwang.

August 4th.

Our Imperial Consulate opened at Newchwang.

August 5th.
Our three destroyers attacked and defeated enemy's fourteen destroyers off Port Arthur.
The Russian gunboat *Civooch* sank herself in the Liao River.

August 10th.
The Russian Fleet attempted a sortie from Port Arthur but was driven back with heavy damages. Admiral Vithoft, Provisionary Commander-in-Chief of Port Arthur Squadron, killed.

August 11th.
The *Askold*, the *Novik*, another warship, and one destroyer took refuge in the Kiao-chao Bay, and another destroyer, *Ryeshitelni*, in Chefoo.

August 12th.
Our fleet captured the *Ryeshitelni*, which had taken refuge in the harbour of Chefoo.
The *Novik* left Kiao-chao Bay for Vladivostock.
Birth of the Czarevitch.

August 13th.
Marshal Yamagata, Chief of the General Staff, sent to Marshal Oyama, Commander-in-Chief of the Manchurian Army, instructions, by the Imperial order, to protect non-combatants in Port Arthur.

August 14th.
Kamimura's Squadron engaged the Vladivostock Squadron off Ulsan and sank the *Rurik*.

August 15th.
The *Tsarevitch* and another warship at Kiao-chao Bay disarmed themselves and are to be interned there during the war.
The Russian Government reported to have issued a protest against the seizure of the *Ryeshitelni* as an infraction of neutrality.

August 16th.
Our Port Arthur Besieging Army sent to the enemy advice to surrender, and conveyed to them at the same time an Imperial order granting the removal of non-combatants from Port Arthur.
Russia reported to have issued new bonds for a loan of 150,000,000 rubles.

August 17th.
Promulgation of special Post Office Savings Bank Regulations applicable at the front.
An enemy's envoy brought their reply refusing both our proposals.
Our army sent to German Naval officers in Port Arthur, through the enemy's envoy, a message from the German Emperor.

August 18th.
An enemy's gunboat of the *Otoajni* type sunk by a mine off Liau-tie-shan.
Our *Yayeyama* conveyed German officers from Port Arthur to Kiao-chao Bay.

August 20th.
Our *Chitose* and *Tsushima* bombarded and destroyed the Russian *Novik* in the harbour of Korsakovsk.

August 23rd.
The Russian battleship *Sevastopol* suffered serious injury by a mine outside Port Arthur.

August 24th.
Enemy's two destroyers damaged by a mine outside Port Arthur.

August 25th.
The Governor of British Malta reported to have prohibited belligerent ships that have detained neutral vessels from coaling.

August 29th.
Yesterday and to-day our blockading fleet captured 26 junks in the enemy's service.

September 4th.
Our army occupied Liao-yang.

September 5th.
Publication of the agreement between Japan and Korea signed on the 22nd of August.
Our Detached Squadron reconnoitred the condition of the *Novik* destroyed at Korsakovsk.

September 10th.
Our army occupied the Jentai coal mines.
Publication of the Prisoners' Labour Regulations.

September 16th.
Marshal Yamagata sent telegraphic instructions to Marshal Oyama concerning the treatment of foreign visitors at the front.

September 18th.
Reported capture of Captain Gunji and the slaughter of his 70 men at Kamtchatka.
The Russian cruiser *Diana* that disarmed herself at Saigon on the 10th of this month is intrusted to the care of the French authorities to be interned there during the present war; and the Russian volunteer cruiser *Lena*, that put into San Francisco on the 11th of this month, disarmed herself and is intrusted to the American Navy to be interned there during the war.

September 25th.
German Prince Karl Anton von Hohenzollern arrived at Tokyo on his way to the front to see the war.

October 2nd.
Our warship captured the smuggling steamer *Shi-shang* at Yingkas.

October 6th.
A Berlin telegram reports the arrival at Bremerhaven on the 5th of over 700 Japanese on their way back from Russia.
Publication of the strategical account of the Port Arthur Besieging Army from the 26th of May to the 31st of July.

October 11th.
German Prince Karl Anton von Hohenzollern left the Shimbashi Station for the front.

October 12th.
The *Shirataka* captured the smuggling steamer *Fu-ping* on her way to Port Arthur.
Subscriptions called for the Third Exchequer Bonds of Yen 80,000,000.

October 14th.
In the battle carried on all along the line from the 10th up to date heavy damages were inflicted upon the enemy, our army capturing more than 30 field guns and frustrating the enemy's aggressive movements.

October 15th.
The big fight started on the 10th named "the Battle of the Shaho" by our Manchurian Headquarters.
An agreement signed to engage Mr. Mekata as Financial Advisor to the Korean Government.

October 17th.
The Baltic Squadron anchored off Danish coast.

October 23rd.
A London telegram reported the publication in St. Petersburg of the Russian loss in the Battle of the Shaho as 12,000 killed and 55,865 wounded.
The Baltic Squadron fired on a British fishing fleet in the North Sea, sinking 2 of them and killing 18 fishermen.

October 26th.
Publication of the Prisoners' Punishment Regulations.

November 1st.
Publication of the strategical account of the Port Arthur Besieging Army from the 1st of August to the 29th of October.

November 5th.
Publication of the strategical account of the Port Arthur Besieging Army from the 30th of October to the 3rd of November.

November 10th.
Publication of the second foreign loan of Yen 120,000,000.

November 16th.
The Detached Baltic Squadron coming via Cape of Good Hope reported to have anchored at Dakar and received a supply of coal and provisions there.
The enemy's destroyer *Ratstoropni*, by taking advantage of a snowstorm, left Port Arthur and arrived at Chefoo to-day at 7 a.m.

November 17th.
Our new loan of £6,000,000 subscribed thirteen times over in London.

November 18th.
An official telegram reported that the Russian destroyer *Ratstoropni* had blown herself up at Chefoo.

November 19th.
A report comes of the departure from Dakar on the 16th of the Baltic Fleet coming via Cape of Good Hope.
Cruisers, transports, and destroyers supplementing the Baltic Squadron reported to have left *Libau* on the 16th.

November 26th.
2 Russian battleships, 3 cruisers, 7 destroyers, and 9 transports reported to have arrived at Port Said.
A telegram comes from Berlin informing of the Baltic Squadron's getting a supply of provisions and water at Port Said.

November 27th.

Telegrams from London and Berlin report the signing yesterday, the 26th, of an Anglo-Russian Convention between Sir C. Hardinge, British Ambassador, and Count Lamsdorff, Russian Minister for Foreign Affairs, concerning the inquiry of the North Sea Accident.

A London telegram under date of the 25th reports the Baltic Squadron just passing the Suez Canal.

November 28th.

The Baltic Squadron reported to have passed the Suez Canal yesterday, the 27th.

November 29th.

A report comes to the effect that 2 Russian cruisers and 3 auxiliary cruisers arrived off Dover on the evening of the 22nd, and that coal-boatlike steamers arrived later to meet them.

November 30th.

According to a Reuter's telegram, dated London, the 29th, Lord Lansdowne, British Secretary of State for Foreign Affairs, advised the Chamber of Shipping that the merchants of a neutral state might sell contraband to a belligerent state at their own risk but that British subjects might be held liable to the British "Foreign Enlistment Acts."

December 1st.

Occupation of the whole of 203-Metre-Hill on the 30th of November at 8 p.m.

December 3rd.

A local truce on the left wing of the Port Arthur Besieging Army yesterday, the 2nd, from 10 a.m. till 4 p.m., in order to remove the killed and wounded.

December 4th.

Banks in Berlin subscribed £20,000,000 towards Russia's new war loan and banks in Paris £30,000,000.

December 7th.

According to a Reuter's telegram, under date London, the 5th, Lord Lansdowne gave instructions to the authorities of Cardiff on the night of the 3rd to prohibit coaling to German steamers.

On the 6th, at 4 p.m., the Russians in Port Arthur sent an envoy to our army and proposed a truce for about 5 hours, which received our agreement.

December 10th.

Our cruiser *Sai-yen* sunk by a mine on the 30th of November.

December 11th.

Telegrams from London and Berlin, dated the 9th and 10th respectively, reported that Russia's Third Squadron will start for the East in January next year.

January 2nd, 1905.

General Stoessel sent to General Nogi yesterday, the 1st, at 9 p.m., a letter proposing the surrender of Port Arthur.

Marshal Yamagata transmitted to General Nogi an Imperial order, permitting General Stoessel to retire with military honours, in appreciation of the faithful performance of his duty.

January 3rd.
The Port Arthur Capitulation Agreement signed yesterday, the 2nd, at 4.35 p.m.

January 9th.
Receipt of Port Arthur prisoners completed on the 7th, of which officers numbered 878 and non-commissioned officers and men 23,491.

January 13th.
Receipt of forts, batteries, warships, steamers, boats, arms, etc. (and other things) at Port Arthur completed on the 10th of this month.

January 14th.
On the 11th, the enemy advanced on Newchwang but were driven back.

January 30th.
The enemy attacking the left wing of our army were driven back yesterday, the 29th, and our army occupied Heikantai, capturing 500 prisoners.

February 3rd.
The fight from the 25th to the 29th of January named "the Battle in the Vicinity of Heikantai."

February 18th.
A Reuter's telegram reported the departure from Libau of Russia's Third Pacific Squadron on the 15th of this month.
General Bilderling reported to have succeeded General Kaulbars as Commander of the Russian Third Army.

February 27th.
Subscriptions called for the Fourth Exchequer Bonds.

March 1st.
The Hull Case Inquiry Commission passed its report on the 25th of February.

March 11th.
Mukden occupied yesterday, the 10th, at 10 a.m.
The fight from the last of February till the middle of this month named "the Battle in the Vicinity of Mukden."

March 17th.
The advanced guard of our army occupied Tieling yesterday, the 16th.
Our Detached Army occupied Hsing-ching on the 13th.

March 21st.
Another detachment occupied Kai-yuen on the 19th.

March 24th.
Another detachment entered Chang-tu-fu on the 21st.

March 26th.
Announcement of floating a loan of £30,000,000 in London and New York.

April 5th.
On the 1st of this month 101 prisoners of Russia's Sanitary Staff were released on our outpost line.

April 9th.
According to a telegram from Singapore, dated yesterday, the 8th, the Baltic Squadron passed off that port on that day at 3 p.m.

April 21st.
A Berlin telegram reports the anchoring of the Baltic Squadron in Kamranh Bay since the 12th of this month.

April 28th.
Publication of the agreement signed on the 1st of this month concerning the transfer for trust of the Korean Communication System.

May 7th.
The enemy's torpedo boats appeared off Hokkaido and sank one of our sailing vessels.

May 13th.
Martial law proclaimed throughout Formosa and its neighbouring sea, except the Pescadores.

May 27th.
Our Combined Squadron met, attacked, and nearly annihilated Russia's Second Pacific Squadron off Tsushima, capturing both of the enemy's admirals.

May 30th.
The battle continued from the 27th to the 28th on the sea off Tsushima named "the Naval Fight of the Japan Sea."

June 1st.
Publication of the loss of our warships *Yashima, Akatsuki, Hayatori, Oshima, Atago,* and *Takasago.*

June 9th.
The President of the United States of America recommended to both Japan and Russia to negotiate for peace.

June 30th.
The crew of the *Kniaz Botenkin,* one of Russia's Black Sea Squadron, reported to have hoisted a flag of rebellion.

July 3rd.
Baron Komura, Minister for Foreign Affairs, and Mr. Takahira, Minister in Washington, appointed Plenipotentiaries for Peace Negotiations, Premier Katsura taking charge of the Foreign Office for the time being.

July 8th.
Baron Komura and suite started for Washington by the *Minnesota.*

July 11th.
Our Sakhalin army occupied the port of Korsakovsk on the morning of the 8th of this month.

July 17th.
Our Sakhalin Landing Force occupied Vladimorovka and Blizine on the 10th of this month.

July 28th.
Our Sakhalin Landing Force occupied Alkova and Dui on the 24th and 25th, respectively.

July 31st.
Our Sakhalin Landing Force occupied Luikoff on the 28th of this month.

APPENDIX IV.

THE TREATY OF PEACE.

OFFICIAL TEXT.

The Treaty of Peace, signed at Portsmouth on September 5, was ratified by the Emperors of Japan and Russia on the 14th instant, and was published here this afternoon in triple texts of Japanese, English, and French. The following is the English text:

His Majesty the Emperor of Japan on the one part, and His Majesty the Emperor of all the Russias on the other part, animated by the desire to restore the blessings of peace to Their countries and peoples, have resolved to conclude a Treaty of Peace, and have, for this purpose, named Their Plenipotentiaries, that is to say:

His Majesty the Emperor of Japan:

His Excellency Baron Komura Jutaro, Jusammi, Grand Cordon of the Imperial Order of the Rising Sun, His Minister for Foreign Affairs, and

His Excellency M. Takahira Kogoro, Jusammi, Grand Cordon of the Imperial Order of the Sacred Treasure, His Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And His Majesty the Emperor of all the Russias:

His Excellency M. Serge Witte, His Secretary of State and President of the Committee of Ministers of the Empire of Russia, and

His Excellency Baron Roman Rosen, Master of the Imperial Court of Russia and His Ambassador Extraordinary and Plenipotentiary to the United States of America;

Who, after having exchanged their full powers, which were found to be in good and due form, have concluded the following Articles:

ART. I. There shall henceforth be peace and amity between Their Majesties the Emperor of Japan and the Emperor of all the Russias and between Their respective States and subjects.

ART. II. The Imperial Russian Government, acknowledging that Japan possesses in Korea paramount political, military, and economical interests, engage neither to obstruct nor interfere with the measures of guidance, protection, and control which the Imperial Government of Japan may find it necessary to take in Korea.

It is understood that Russian subjects in Korea shall be treated exactly in the same manner as the subjects or citizens of other foreign Powers, that is to say, they shall be placed on the same footing as the subjects or citizens of the most favoured nation.

It is also agreed that, in order to avoid all cause of misunderstanding, the two High Contracting Parties will abstain, on the Russo-Korean frontier, from taking any military measure which may menace the security of Russian or Korean territory.

ART. III. Japan and Russia mutually engage:

1. To evacuate completely and simultaneously Manchuria, except the territory affected by the lease of the Liao-tung Peninsula, in conformity with the provisions of additional Art. I. annexed to this Treaty; and

2. To restore entirely and completely to the exclusive administration of China all portions of Manchuria now in the occupation or under the control of the Japanese or Russian troops, with the exception of the territory above mentioned.

The Imperial Government of Russia declare that they have not in Manchuria any territorial advantages or preferential or exclusive concessions in impairment of Chinese sovereignty or inconsistent with the principle of equal opportunity.

ART. IV. Japan and Russia reciprocally engage not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria.

ART. V. The Imperial Russian Government transfer and assign to the Imperial Government of Japan, with the consent of the Government of China, the lease of Port Arthur, Talien and adjacent territory and territorial waters and all rights, privileges, and concessions connected with or forming part of such lease, and they also transfer and assign to the Imperial Government of Japan all public works and properties in the territory affected by the above-mentioned lease.

The two High Contracting Parties mutually engage to obtain the consent of the Chinese Government mentioned in the foregoing stipulation.

The Imperial Government of Japan on their part undertake that the proprietary rights of Russian subjects in the territory above referred to shall be perfectly respected.

ART. VI. The Imperial Russian Government engage to transfer and assign to the Imperial Government of Japan, without compensation and with the consent of the Chinese Government, the railway between Changchun (Kuan-cheng-tzu) and Port Arthur and all its branches, together with all rights, privileges, and properties appertaining thereto in that region, as well as all coal mines in the said region belonging to or worked for the benefit of the railway.

The two High Contracting Parties mutually engage to obtain the consent of the Government of China mentioned in the foregoing stipulation.

ART. VII. Japan and Russia engage to exploit their respective railways in Manchuria exclusively for commercial and industrial purposes, and in nowise for strategic purposes.

It is understood that that restriction does not apply to the railway in the territory affected by the lease of the Liao-tung Peninsula.

ART. VIII. The Imperial Governments of Japan and Russia, with a view to promote and facilitate intercourse and traffic, will, as soon as possible, conclude a separate convention for the regulation of their connecting railway services in Manchuria.

ART. IX. The Imperial Russian Government cede to the Imperial Government of Japan, in perpetuity and full sovereignty, the southern portion of the Island of Sakhalin and all islands adjacent thereto, and all public works and properties thereon. The fiftieth degree of north latitude is adopted as the northern boundary of the ceded territory. The exact alignment of such territory shall be determined in accordance with the provisions of additional Art. II. annexed to this Treaty.

Japan and Russia mutually agree not to construct in their respective possessions on the Island of Sakhalin or the adjacent islands, any fortifications or other similar military works. They also respectively engage not to take any military measures which may impede the free navigation of the Straits of La Perouse and Tartary.

ART. X. It is reserved to the Russian subjects inhabitants of the territory ceded to Japan, to sell their real property and retire to their country; but, if they prefer to remain in the ceded territory, they will be maintained and protected in the full exercise of their industries and rights of property, on condition of submitting to Japanese laws and jurisdiction. Japan shall have full liberty to withdraw the right of residence in, or to deport from, such territory any inhabitants who labour under political or administrative disability. She engages, however, that the proprietary rights of such inhabitants shall be fully respected.

ART. XI. Russia engages to arrange with Japan for granting to Japanese subjects rights of fishery along the coasts of the Russian possessions in the Japan, Okhotsk, and Behring Seas.

It is agreed that the foregoing engagement shall not affect rights already belonging to Russian or foreign subjects in those regions.

ART. XII. The Treaty of Commerce and Navigation between Japan and Russia having been annulled by the war, the Imperial Governments of Japan and Russia engage to adopt as the basis of their commercial relations, pending the conclusion of a new treaty of commerce and navigation on the basis of the Treaty which was in force previous to the present war, the system of reciprocal treatment on the footing of the most favoured nation, in which are included import and export duties, customs formalities, transit and tonnage dues, and the admission and treatment of the agents, subjects, and vessels of one country in the territories of the other.

ART. XIII. As soon as possible after the present Treaty comes into force, all prisoners of war shall be reciprocally restored. The Imperial Governments of Japan and Russia shall each appoint a special Commissioner to take charge of prisoners. All prisoners in the hands of one Government shall be delivered to and received by the Commissioner of the other Government or by his duly authorised representative, in such convenient numbers and at such convenient ports of the delivering State as such delivering State shall notify in advance to the Commissioner of the receiving State.

The Governments of Japan and Russia shall present to each other, as soon as possible after the delivery of prisoners has been completed, a statement of the direct expenditures respectively incurred by them for the care and maintenance of prisoners from the date of capture or surrender up to the time of death or delivery. Russia engages to repay to Japan, as soon as possible after the exchange of the statements as above provided, the difference between the actual amount so expended by Japan and the actual amount similarly disbursed by Russia.

ART. XIV. The present Treaty shall be ratified by Their Majesties the Emperor of Japan and the Emperor of all the Russias. Such ratification shall, with as little delay as possible, and in any case not later than fifty days from the date of the signature of the Treaty, be announced to the Imperial Governments of Japan and Russia respectively through the French Minister in Tokio and the Ambassador of the United States in Saint Petersburg, and from the date of the later of such announcements this Treaty shall in all its parts come into full force.

The formal exchange of the ratifications shall take place at Washington as soon as possible.

ART. XV. The present Treaty shall be signed in duplicate in both the English and French languages. The texts are in absolute conformity, but in case of discrepancy in interpretation, the French text shall prevail.

In witness whereof the respective Plenipotentiaries have signed and affixed their seals to the present Treaty of Peace.

Done at Portsmouth (New Hampshire) this fifth day of the ninth month of the thirty-eighth year of Meiji, corresponding to the twenty-third day of August (fifth September), one thousand nine hundred and five.

(Signed) SERGE WITTE. [L. S.]
(Signed) ROSEN. [L. S.]
(Signed) JUTARO KOMURA. [L. S.]
(Signed) K. TAKAHIRA. [L. S.]

Supplementary Agreement.

In conformity with the provisions of Arts. III. and IX. of the Treaty of Peace between Japan and Russia of this date, the undersigned Plenipotentiaries have concluded the following additional Articles:

I. To Article III.

The Imperial Governments of Japan and Russia mutually engage to commence the withdrawal of their military forces from the territory of Manchuria simultaneously and immediately after the Treaty of Peace comes into operation, and within a period of eighteen months from that date the Armies of the two countries shall be completely withdrawn from Manchuria, except from the leased territory of the Liao-tung Peninsula.

The forces of the two countries occupying the front positions shall be first withdrawn.

The High Contracting Parties reserve to themselves the right to maintain guards to protect their respective railway lines in Manchuria. The number of such guards shall not exceed fifteen per kilometre, and within that maximum number the Commanders of the Japanese and Russian Armies shall, by common accord, fix the number of such guards to be employed, as small as possible, having in view the actual requirements.

The Commanders of the Japanese and Russian forces in Manchuria shall agree upon the details of the evacuation in conformity with the above principles, and shall take by common accord the measures necessary to carry out the evacuation as soon as possible, and in any case not later than the period of eighteen months.

II. To Article IX.

As soon as possible after the present Treaty comes into force, a Commission of Delimitation, composed of an equal number of members to be appointed respectively by the two High Contracting Parties, shall on the spot mark in a permanent manner the exact boundary between the Japanese and Russian possessions on the Island of Sakhalin. The Commission shall be bound, so far as topographical considerations permit, to follow the fiftieth parallel of north latitude as the boundary line, and in case any deflections from that line at any points are found to be necessary, compensation will be made by correlative deflections at other points. It shall also be the duty of the said Commission to prepare a list and description of the adjacent islands included in the cession; and, finally, the Commission shall prepare and sign maps showing the boundaries of the ceded territory. The work of the Commission shall be subject to the approval of the High Contracting Parties.

The foregoing additional Articles are to be considered as ratified with the ratification of the Treaty of Peace to which they are annexed.

Portsmouth, the 5th day, 9th month, 38th year of Meiji, corresponding to the 23rd August (5th September), 1905.

(Signed) Serge Witte.
(Signed) Rosen.
(Signed) Jutaro Komura.
(Signed) K. Takahira.

It is officially announced that the ratifications of the Russo-Japanese Peace Treaty were exchanged at Washington, between Mr. Takahira and Baron Rosen, on the 25th inst.

APPENDIX V.

JAPANESE REGULATIONS GOVERNING CAPTURES AT SEA.

Regulations governing captures at sea have been settled as follows, and shall be enforced from the fifteenth day of the third month of the thirty-seventh year of Meiji (March 15, 1904).

GENERAL HEADQUARTERS,

Seventh day of the third month of the thirty-seventh year of Meiji.

REGULATIONS GOVERNING CAPTURES AT SEA.

CHAPTER I.—General Rules.

ARTICLE I. H. I. J. M.'s ships are authorised in time of war to visit, search, and capture vessels according to these regulations.

ART. II. No visit, search, or capture shall be made in neutral waters nor in waters clearly placed by treaty stipulations outside the zone of hostile operations.

ART. III. The national character of a person shall be decided by the place of his actual residence, whatever his nationality may be.

ART. IV. By the place of residence is meant the place where a person permanently lives; in the case of a merchant, the place where he principally carries on his business; and in the case of a consul who is engaged in mercantile business, the place where he carried on that business.

ART. V. The district temporarily occupied by the enemy shall not be considered enemy territory in respect to the national character of persons, ships, and their cargoes.

ART. VI. The following are enemy vessels:

1. Vessels employed by the enemy, including the case in which such employment is compulsory.

2. Vessels voyaging under the enemy's flag or with licence of the enemy.

3. Vessels, the whole or part of which is owned by the enemy State or its subjects. Vessels that have certificates of nationality as Japanese, or that voyage under the licence of Japan, do not, however come under this rule.

4. Vessels, the ownership of which has been transferred before the war, but in expectation of its outbreak or during the war, by the enemy State or its subjects to persons having residence in Japan or a neutral State, unless there is proof of a complete and bona fide transfer of ownership.

In case the ownership of a vessel is transferred during its voyage, and actual delivery is not effected, such transfer of ownership shall not be considered as complete and bona fide.

ART. VII. Japanese vessels are those which are mentioned below and which do not come under the preceding article:

1. Those which have the certificate of nationality of the Empire or those which voyage under the licence of the Imperial Government.

2. Vessels owned by persons who have residence in the Empire.

3. A vessel, the ownership of which has been transferred before the war but in expectation of its outbreak or during the war by a person

who has residence in the Empire to a person who has residence in a neutral State, unless there is proof of a bona fide and complete transfer of the ownership of the vessel.

In case the ownership of a vessel is transferred during its voyage, and its delivery is not effected, such transfer shall not be considered as bona fide and complete.

ART. VIII. The national character of a cargo shall be decided by the national character of the owner.

ART. IX. In the following cases the cargo shall be considered enemy property, in spite of the above regulations:

1. A cargo consigned before the war but in expectation of its outbreak or during the war by a person who has residence in the Empire or in a neutral State or by his representative to the enemy State or to a subject of the enemy State or to his representative.

2. A cargo, the ownership of which has been transferred before the war but in expectation of its outbreak or during the war by the enemy State or its subject to a person who has a residence in the Empire or in a neutral State, unless there is proof of full and bona fide transfer.

In case the ownership of a cargo is transferred during a voyage, and actual delivery is not effected, such transfer shall not be considered bona fide and full.

ART. X. Concerning matters not provided for in the law, treaties, and these regulations, the rules of International Law shall be applied.

CHAPTER II.—Contraband Persons, Papers, and Goods.

ART. XI. Contraband persons are the enemy's military men and others who are being transported to be employed for hostile purposes.

ART. XII. Contraband papers are all official correspondence of the officers of the enemy's Government.

Official correspondence between the enemy's Government and its ministers and consuls residing in neutral States, and official correspondence between the enemy's Government and the Government of neutral States are not, however, contraband.

ART. XIII. The following goods are contraband of war when they are destined to the enemy's territory or to the enemy's army or navy:

Arms, ammunition, explosives, and materials (including also lead, saltpetre, sulphur, etc.), and machines for manufacturing them, cement, uniforms and equipment for army and navy, armor plates, materials for building ships and their equipments, and all articles to be used solely for hostile purposes.

ART. XIV. The following goods are contraband of war in case they are destined to the enemy's army or navy, or in case they are destined to the enemy's territory and from the landing place it can be inferred that they are intended for military purposes:

Provisions and drinks, *clothing and materials for clothing*,[1] horses, harnesses, fodder, wheeled vehicles, coal, and *other kinds of fuel*,[1] timber, currency, gold and silver bullion, materials for telegraph, telephone, and railroad.

ART. XV. The destination of a vessel is generally considered as also the destination of her cargo.

ART. XVI. In case a vessel is bound for a place not in the enemy's territory, but if her intermediate port of call is an enemy's port, or in case there is reason to believe the vessel is to meet enemy's ships during the voyage, the destination of such vessels shall be considered as enemy's territory.

[1] The words in italics were added to the Regulations by an amendment of February 9, 1905.

ART. XVII. If a vessel bound for a port not in the enemy's territory carries a cargo which there is reason to believe is to be transported to the enemy's territory, such voyage shall be considered as continuous and the ship as destined to the enemy's territory from the first, whether she arrive at the port and land her cargo or not.

ART. XVIII. Of the goods mentioned in Arts. XIII. and XIV., if it is clear from their quantity and quality that they are intended for the vessel's own use, such goods shall not be considered contraband of war.

ART. XIX. If any vessel is suspected to have in her cargo contraband of war the captain of the war vessel shall inspect the bill of lading, clearance, and other papers, interrogate the crew of the vessel, and ascertain her destination.

CHAPTER III.—Ship's Papers.

ART. XX. Ship's papers generally consist of the following documents:

1. *Certificate of Nationality of the Vessel.*—This document is a certificate issued by the register officer of the port where the vessel is registered, and generally contains the name and tonnage of the vessel, the name of the master, details of how the vessel came into the possession of the present owner, and the name, nationality, etc., of the registered owner.

2. *Passport.*—This document is a demand issued by the government of the country to which the vessel belongs, that the vessel with her crew, passengers, goods, and merchandise shall be allowed free passage without any hindrance, and generally contains the name and residence of the master, the name, construction, and destination of the vessel.

3. *Permit for Navigation.*—This document is issued by the officers of the port where the vessel fitted out for the voyage, and gives her the right to navigate, carrying the flag and passport of the country to which she belongs. The document generally contains the nature, quantity, and owner of the cargo, and the place of destination.

4. *Charter Party.*—This is a contract entered into by the owner or master of a vessel and the person who charters her concerning the hire of the whole or part of the vessel, and generally contains the name of the master, the name and construction of the vessel, the port where she is lying when chartered, the name and residence of the person who chartered her, the nature of the cargo, the ports where it is to be loaded and unloaded, and the freightage.

5. *Log-book.*—This is a journal kept by the master of the vessel in accordance with the regulations of the country to which she belongs.

6. *Ship's Journal.*—This is a journal kept by the master of the vessel to make report to her owner.

7. *Contract with the Shipbuilder.*—This document must be carried by a vessel while there is no change in ownership since her completion, and is used to prove her nationality in case there is no passport, permit for navigation, or certificate of nationality.

8. *Assignment.*—This document proves that the ownership of a vessel has been transferred to the purchaser.

9. *Bills of Lading.*—These are generally made separately for goods of different shippers. Those remaining on board are duplicates of those which the master has given to the shippers. A bill of lading contains the name of the shipper, date and place of loading, the name and destination of the vessel, the nature, quantity, destination, and freightage of the goods.

10. *Invoice.*—An invoice always accompanies goods and contains details of each bale of goods, the price, freightage, custom duty, and other charges and expenses, and the names and residences of the consignor and consignee.

11. *Freight List.*—This contains the names of the consignor and consignee, the mark and number of each bale, quantity of goods in each bale in detail, and accounts of freightage corresponding to the bill of lading, and signed generally by an agent who manages clearance of vessels, and by the master.

12. *Clearance.*—This is issued by the officer of the custom-house which the vessel left last, and proves that the custom duty has been paid. It also contains the destination of the vessel and her cargo.

13. *Muster Roll.*—This contains the names of the crew, with their ages, duties, residences, and places of birth.

14. *Shipping Papers.*—This is a contract signed by every member of the crew, with details of the limits of the voyage and the period of hire contracted.

15. *Bill of Health.*—This is a certificate testifying that there has been no contagious disease prevailing in the port which the vessel left and that there has been no case of such disease on board the vessel.

Chapter IV.—Blockade.

Art. XXI. Blockade is to close an enemy's port, bay, or coast with force, and is effective when the force is strong enough to threaten any vessels that attempt to go in or out of the blockaded port or bay or to approach the blockaded coast.

Temporary evacuation of a blockaded area by a squadron or man-of-war on account of bad weather or to attain the object of the blockade does not interfere with the effectiveness of the blockade.

Art. XXII. When a blockade is instituted the commanding officer of the squadron or man-of-war shall issue a declaration of blockade by filling out Form I with the area of blockade and the date of the declaration.

Art. XXIII. When enforcing a new blockade after former blockade has lost its effectiveness, or when there is change in the area of blockade, a new declaration must be made according to the preceding article.

Art. XXIV. When the commanding officer of a squadron or a man-of-war declares a blockade, he shall take the following steps:

1. He shall report the declaration of the blockade to the minister of the navy.

2. He shall report the declaration of the blockade to every Japanese minister residing in the countries near the blockaded area, and shall request him to inform the Government of the country and all the foreign ministers and consuls residing in the country to which he is accredited of the establishment of the blockade.

3. He shall communicate the declaration of the blockade to all the foreign consuls residing in neutral districts in the neighbourhood of the blockaded area, and shall take any other measures necessary to make known the fact of the blockade.

4. He shall inform as far as possible, by means of a flag of truce, the proper officers and consuls of neutral countries residing within the blockaded area, of the declaration of the blockade.

Art. XXV. In case the master of a vessel receives warning direct from an imperial war vessel, or it is clear that he knows of the existence of the blockade from official or private information or from any other source, such master shall be considered to have received actual notice of the blockade.

ART. XXVI. In the following cases it shall be deemed that notice of the declaration of the blockade has been received:

1. The case in which the master of a vessel is considered to have received a notice of the blockade whether he has actually received it or not, such notice having been sent to the proper authorities of the country to which the vessel belongs, and there having elapsed a sufficient time for the authorities to notify the residents of their nationality.

2. The case in which the master of a vessel is considered to have received a notice of the blockade, the fact of the blockade having been made public.

ART. XXVII. The following vessels shall be considered to have broken through a blockade outward:

1. A vessel that has issued out of the blockaded area or has attempted to do so.

2. A vessel that has transshipped outside the blockaded area the cargo of a vessel that has broken through a blockade outward, or has attempted to make such transshipment.

ART. XXVIII. In any of the following cases the preceding article shall not be applied:

1. When a vessel comes out of the blockade area, having a permit from the Imperial Government or from the commanding officer of the squadron or war vessel on duty of blockade.

2. When a vessel which entered the blockaded port during the existence of the blockade, having received no notice of the fact, sails out of the port without any cargo.

3. When a vessel which was in the port at the time of the declaration of the blockade sails out of the port without any cargo.

4. When a vessel which was in the port and was loaded before the declaration of the blockade sails out.

ART. XXIX. Any vessel which has received notification of a blockade shall be considered to have violated the blockade inward in the following cases:

1. When such vessel has passed into the blockaded area or has attempted to do so.

2. When such vessel, lying in the neighbourhood of the blockaded area, is considered to be steering into the area, no matter what port of destination is mentioned in the ship's papers.

3. When such vessel has transported or attempted to transport cargo to a blockaded place, by transshipping to another vessel outside of the blockaded area in order that the latter may pass the line of blockade.

4. When such vessel is bound for the blockaded port.

ART. XXX. To vessels coming under one of the following heads, the preceding article shall not apply:

1. When a vessel has permission of the Imperial Government or of the commanding officer of the blockading squadron or man-of-war.

2. When the master of the vessel has ventured to make a blockaded port his destination anticipating termination of the blockade and intending to steer for another port in case the blockade is still in force, or when there are extenuating circumstances and the vessel comes from a very distant place.

3. When it is clear that the master of a vessel bound for a blockaded port has abandoned the idea of reaching that port.

4. When a vessel enters a blockaded area, it having become necessary to put into port from want of provisions, rough weather, or any other unavoidable circumstances, and there being no other port or bay to put in.

ART. XXXI. When a blockade is discontinued the commanding of-

ficer of the squadron or the man-of-war shall immediately report it to the minister of the navy and shall take necessary steps to make it generally known.

Chapter V.—Visit, Search, and Capture.

Art. XXXII. Any private vessel regarding which there is suspicion which would justify her capture shall be visited and searched no matter of what national character she is.

Art. XXXIII. A neutral vessel under convoy of a war vessel of her country shall not be visited nor searched if the commanding officer of the convoying war vessel presents a declaration signed by himself stating that there is on board the vessel no person, document, or goods that are contraband of war, and that all the ship's papers are perfect, and stating also the last port which the vessel left and her destination. In case of grave suspicion, however, this rule does not apply.

Art. XXXIV. In visiting or searching a neutral mail ship if the mail officer of the neutral country on board the ship swears in a written document that there are no contraband papers in certain mail bags those mail bags shall not be searched. In case of grave suspicion, however, this rule does not apply.

Art. XXXV. All enemy vessels shall be captured. Vessels belonging to one of the following categories, however, shall be exempted from capture if it is clear that they are employed solely for the industry or undertaking for which they are intended:

1. Vessels employed for coast fishery.
2. Vessels making voyage for scientific, philanthropic, or religious purposes.
3. Light-house vessels and tenders.
4. Vessels employed for exchange of prisoners.

Art. XXXVI. Any vessel of the Empire which carries on commerce with the enemy state or its subjects or makes voyage with such intention shall be captured, unless such vessel has no knowledge of the outbreak of war or has permission from the Imperial Government.

Art. XXXVII. Any vessel that comes under one of the following categories shall be captured, no matter of what national character it is:

1. Vessels that carry persons, papers, or goods that are contraband of war.
2. Vessels that carry no ship's papers, or have wilfully mutilated or thrown them away, or hidden them, or that produce false papers.
3. Vessels that have violated a blockade.
4. Vessels that are deemed to have been fitted out for the enemy's military service.
5. Vessels that engage in scouting or carry information in the interest of the enemy, or are deemed clearly guilty of any other act to assist the enemy.
6. Vessels that oppose visitation or search.
7. Vessels voyaging under the convoy of an enemy's man-of-war.

Art. XXXVIII. Vessels carrying contraband persons, papers, or goods, but which do not know the outbreak of war shall be exempt from capture.

The fact that the master of a vessel does not know the persons, papers, or goods on board to be contraband of war, or that he took them on board under compulsion, shall not exempt the vessel from capture.

Art. XXXIX. Vessels that come under one of the following cases may be captured no matter of what national character they are:

1. When a vessel does not produce the necessary papers or they are not kept in good order.

2. When there are contradictions among the ship's papers or between the statements of the master and the ship's papers.

3. Besides the above two cases, when as the result of visitation or search there is sufficient suspicion to justify capture according to articles from XXXV. to XXXVII.

CHAPTER VI.—Disposition of Captured Vessels and their Cargo and Persons on Board.

ART. XL. Enemy vessels shall be forfeited.

Of the cargo on board, mentioned in the above clause, enemy goods shall be forfeited. In case of an armed vessel, however, the whole cargo shall be forfeited.

ART. XLI. Japanese vessels which carry on commerce with the enemy state or its subjects or which are making voyage with such intention shall be forfeited.

Of the cargo on board the vessels mentioned in the above clause, all the goods owned by the owners of the vessels and all the enemy goods shall be forfeited.

ART. XLII. Contraband persons shall be made prisoners and contraband papers shall be forfeited.

Any vessel carrying contraband persons or papers and the goods on board which belong to the owner of such vessel, shall be forfeited, unless the captain proves that not by his own fault he is unacquainted with the fact.

ART. XLIII. Contraband goods and all goods on board belonging to the owner of the contraband shall be forfeited.

When the owner of a vessel carrying contraband is also the owner of the contraband goods, the vessel shall be forfeited.

ART. XLIV. A vessel which has taken in contraband goods, using deceitful means, and all the goods on board belonging to the owner of such vessel, shall be forfeited.

ART. XLV. A vessel that has broken through a blockade and her cargo shall be forfeited. If the owner of the cargo proves that he is innocent of such breach of blockade, such cargo shall be released.

ART. XLVI. Vessels that are recognised to have been fitted out for the enemy for military purposes, and the goods belonging to the owners of such vessels, shall be confiscated.

ART. XLVII. Vessels ascertained to have scouted or carried information to give benefit to the enemy or to have done any other acts to assist him, and all goods belonging to the owners of such vessels, shall be confiscated.

ART. XLVIII. Vessels that have opposed visit or search, and all the goods belonging to the owners of such vessels, shall be forfeited.

ART. XLIX. Vessels voyaging under convoy of the enemy's men-of-war, and all goods belonging to the owners of such vessels, shall be forfeited.

ART. L. The masters and crews of enemy's merchant vessels may be made prisoners.

Passengers, and the master and crew of a vessel not enemy, shall not be made prisoners. In case it is necessary to call them as witnesses they may be detained.

CHAPTER VII.—Procedure in Capturing Vessels.

ART. LI. In visiting or searching a vessel the captain of the man-of-war shall take care not to divert her from her original course more than necessary and as far as possible not to give her inconvenience.

ART. LII. The captain of an Imperial man-of-war may chase a ves-

sel without hoisting the ensign of the Imperial navy or under false colors. But before giving the vessel the order to stop he must display the ensign of the Imperial navy.

ART. LIII. The captain of an Imperial man-of-war shall in no case order the vessel to be visited or searched to send to his ship her boat, crew, or papers.

ART. LIV. The captain of the man-of-war shall first communicate by signal flag or steam whistle his intention to visit the vessel. At night he shall display a white light above the ensign in place of the signal flag.

In case it is impossible on account of bad weather to communicate his intention by any of the means mentioned above, or in case the vessel does not make any response to the above signals, he shall give order to stop by firing two blank cartridges, and if there is further necessity, by firing a shot ahead of the vessel.

If after giving the above warning the vessel still fails to obey the order to stop, fire shall be directed first at the yards and then at her hull.

ART. LV. On the vessel's stopping, the captain of the man-of-war shall send a boat to her with a boarding officer and his assistant.

The crew of the boat shall not wear arms but they may be kept in the boat.

When boarding the vessel the boarding officer may take with him, if he deems it necessary, not more than two of the boat's crew.

ART. LVI. The boarding officer, if he has ground for suspicion, shall demand with proper courtesy to inspect the ship's papers. When the master of the vessel refuses to produce them, the boarding officer may insist upon it.

ART. LVII. When the boarding officer deems, after inspecting the papers, that the vessel is not to be captured, she shall be released at once by order of the captain of the man-of-war.

ART. LVIII. When the boarding officer, after inspecting the papers, deems the vessel to be suspicious, he shall search her.

In this case he may, if he deems it necessary, call the crew of the boat on board to assist, or he may ask for assistance from the ship from which he was sent.

ART. LIX. Search shall be made together with the master of the vessel or his representative.

ART. LX. The boarding officer shall require the master of the vessel or his representative to open any locked place or furniture, and if the latter refuses to comply the boarding officer may take steps required for the occasion.

ART. LXI. The boarding officer if he finds, while making search, that there is no ground for capturing the vessel shall discontinue the search, and the vessel shall be released at once by the order of the captain of the man-of-war.

ART. LXII. The boarding officer, before he leaves the vessel, shall ask the master whether he has any complaint regarding the procedure of visiting or searching, or any other points, and if the master makes any complaint he shall request him to produce them in writing.

ART. LXIII. The boarding officer shall enter in the log-book of the vessel when and where the visit or search was made, the name of the man-of-war from which he was sent, and the name and rank of her captain, and shall sign his own name and rank.

ART. LXIV. When a vessel is to be released on the ground that she has not received notification of blockade, or as coming under section 2 of Art. XXX., or as not knowing the outbreak of the war under Arts. XXXVI. or XXXVIII., the boarding officer shall enter a warning according to Forms II. or III. in the vessel's log-book or upon the paper

certifying her nationality, and shall order the vessel to retrace or to change her course, or take any other proper measure.

ART. LXV. After visit and search has been made, if the captain of the man-of-war still has suspicion of the vessel, he shall order the boarding officer to hear the explanation of her master, and if after these explanations there still appear to be grounds for capturing her, such vessel shall be captured.

ART. LXVI. In deciding whether a vessel is to be captured or not, the nature of the vessel, her equipments, cargo, and papers, the master and crew and their testimony, etc., shall be taken into consideration.

ART. LXVII. If the captain of the man-of-war decides to capture a vessel he shall inform her master of the reason, and shall take possession of the vessel by sending one officer and the required number of petty officers and men. If on account of bad weather or any other cause it is impossible to despatch these officers and men, the captain of the man-of-war shall order the vessel to haul down her colours and to steer according to his direction. If the vessel does not obey the orders of the captain of the man-of-war, he may take any measures required for the occasion.

ART. LXVIII. When a mail steamer is captured, mail bags considered to be harmless shall be taken out of the ship without breaking the seal, and steps shall be taken quickly to send them to their destination at the earliest date.

ART. LXIX. The captain of the man-of-war shall land at a convenient port when possible all the passengers of a captured vessel, except those who are deemed to be contraband persons or those who must be detained as witnesses.

ART. LXX. If the captain of a man-of-war, after capturing a vessel, ascertains that the capture was unlawful, he shall instantly release her.

ART. LXXI. The captain of a man-of-war shall cause due notes to be entered in the log-book of his ship concerning a visit, search, or capture.

ART. LXXII. The captain of a man-of-war shall immediately submit to the minister of the navy detailed accounts of visit, search, or capture, with his opinions.

ART. LXXIII. When the captain of a man-of-war recaptures a Japanese or a neutral vessel captured by the enemy, he may release her if she has not yet been taken into an enemy port or has not been used for military purposes.

CHAPTER VIII.—Procedure after Capture.

ART. LXXIV. When a vessel has been taken possession of, the captain of the man-of-war shall seize the documents concerning the vessel and her cargo and all other documents on board; arrange, number, and seal them; and the master of the vessel and the captain of the man-of-war shall sign on them; and a certificate prepared according to Form IV. shall be attached.

The certificate of the above clause is generally made by the officer who received or found the documents.

ART. LXXV. When documents are found which have been mutilated or thrown away or hidden, the captain of the man-of-war shall deal with them according to the preceding article; but in this case the certificate shall be according to Form V.

ART. LXXVI. The captain of the man-of-war shall prepare in duplicate a certificate as to money, negotiable notes, and other valuables on board the vessel, and shall give one copy to the master of the vessel.

ART. LXXVII. The captain of the man-of-war shall, so far as possible, close and seal the holds of the captured vessel and shall take care to prevent embezzlement of any cargo, furniture, or any other things on board.

ART. LXXVIII. The captain and the officers of the man-of-war shall treat with proper courtesy the master and crew of the captured vessel and those who are to be made prisoners, and shall pay proper attention to the protection of their personal effects. Those who are to be made prisoners may be kept under restraint as required, but other persons on board shall not be restrained, unless there is a special reason.

ART. LXXIX. The captain of the man-of-war shall send on board the captured vessel a prize officer and the requisite number of petty officers and men, and shall send the vessel and her cargo to a port where there is an Imperial Prize Court or to a Japanese port in the neighbourhood of such port.

ART. LXXX. The captain of the man-of-war may request the master and crew of the captured vessel to assist in navigating the vessel under the direction of the prize officer; and in case such request is not complied with, he may insist upon it.

ART. LXXXI. The captain of the man-of-war shall send into port on board the captured vessel the master and crew, and all the cargo and certificates, and the ship's papers, so far as possible in the same condition in which they were found at the time of capture.

The captain of the man-of-war, when he thinks it necessary, shall send an officer who can testify to the circumstances of the capture.

ART. LXXXII. When the captain of the man-of-war thinks that it is not proper to send in the captured vessel, the master, and the whole crew, he shall send at least three or four principal members of the crew as witnesses, and two of them shall be selected from the master, chief purser, mates, and chief seaman.

That part of the crew taken to another vessel shall be sent without delay to the port where the captured vessel has been sent.

ART. LXXXIII. In the case of the preceding article, the captain of the man-of-war shall order the prize officer to prepare a certificate according to Form VII., stating that part of the crew taken to another vessel and the reason for it.

ART. LXXXIV. When there are among the cargo of a captured vessel any goods that putrefy easily or are not adapted for transportation, the captain of the man-of-war shall appoint a board from among the officers of the ship who are qualified for such work, and shall order them to submit a report.

The substance of such investigation shall be entered in the log-book.

ART. LXXXV. When the board reports that there are among the cargo goods that are not adapted for transportation, the captain of the man-of-war shall sell such goods at the nearest Japanese port, or at a neutral port, if permission is obtained from the authorities of the neutral State. Any goods that are not salable may be disposed of as seems best.

ART. LXXXVI. Before putting up such goods for sale the captain of the man-of-war shall select the most competent appraisers possible and shall have the whole of the cargo, or that part of it which is to be sold, appraised in writing.

Such sale, when possible, shall be made by auction, in the presence of the prize officer and a Japanese consul, if convenient, or any other Japanese officer lying near the place where the sale is to be made.

ART. LXXXVII. The captain of the man-of-war shall order the prize officer to prepare a certificate according to Form VIII., concerning the procedure of the sale, and shall send the certificate, accom-

panied by the report of the board of survey, appraisements, accounts of the sale, and other documents, together with the vessel.

ART. LXXXVIII. When the captain of a man-of-war deems a captured vessel unfit to be sent into port as above prescribed, he shall appoint from among the officers a competent board to investigate the matter and direct them to submit a report.

The gist of their report shall be entered in the log-book.

ART. LXXXIX. If the board reports that the captured vessel is unfit to be sent into port as prescribed, the captain of the man-of-war shall send the vessel to the nearest Japanese port or the nearest neutral port, with the consent of the neutral authorities.

ART. XC. In the case of the preceding article the captain of the man-of-war shall order the prize officer to prepare a certificate according to Form IX., in which the circumstances of sending the vessel to the nearest Japanese port or to the nearest neutral port shall be stated in detail, and the captain shall order the prize officer to send this certificate, accompanied by the report of the board, and the witnesses, ship's papers, and any other documents required for judicial examination, to the nearest Imperial Prize Court.

ART. XCI. In the following cases, and when it is unavoidable, the captain of the man-of-war may destroy a captured vessel or dispose of her according to the exigency of the occasion. But before so destroying or disposing of her he shall transship all persons on board, and as far as possible the cargo also, and shall preserve the ship's papers and all other documents required for judicial examination:

1. When the captured vessel is in very bad condition, and cannot be navigated on account of the heavy sea.
2. When there is apprehension that the vessel may be recaptured by the enemy.
3. When the man-of-war cannot man the prize without so reducing her own complement as to endanger her safety.

ART. XCII. In the cases of the above article the captain of the man-of-war shall direct the prize officer to prepare a certificate stating the circumstances of inability to send in the prize and the details of her disposal, and to send it to the nearest Prize Court, together with persons and cargo removed from the vessel, the ship's papers, and all other documents required for judicial examination.

ART. XCIII. A prize officer, when ordered to take possession of a captured vessel, shall prepare an inventory according to Form X. of the stores, furniture, and cargo, so far as it can be ascertained without disturbing the stowage. In preparing this inventory the prize officer may request assistance of the master of the vessel, and shall give him a copy of the inventory signed by himself.

ART. XCIV. The prize officer shall keep a journal in which he shall enter events concerning the vessel, cargo, and persons on board.

ART. XCV. When a prize officer, while in charge of a captured vessel, receives any new documents or finds or picks up those mutilated or thrown away or hidden, he shall put them in order, number them, and affix to them a certificate prepared according to Form XI.

ART. XCVI. The prize officer shall pay the greatest attention to navigating captured vessel, and shall endeavour not to cause any damage to the vessel or her cargo.

ART. XCVII. The prize officer may land or transship the persons and cargo on board the captured vessel, but only in case of pressing necessity. In this case he shall prepare a certificate according to Form XII., stating the persons and goods landed or transshipped and the reason for such action. The persons and goods landed or transshipped shall be sent without delay by the most convenient means to the Imperial Prize Court.

ART. XCVIII. The prize officer, when he arrives at the place of destination, shall deliver the captured vessel to the Prize Court and shall make a request for examination.

FORMS.

FORM I. (Referred to in Art. XLVII.)

DECLARATION OF BLOCKADE.

I hereby declare that on the .... day of ..... last the ....., from ....., in latitude ....., longitude ....., to ....., in latitude ....., longitude ....., were placed in a state of blockade by a competent force of His Imperial Japanese Majesty's ships, and are now in such state of blockade; and that all measures authorised by the law of nations and the respective treaties between the Empire of Japan and the different neutral powers will be enforced on behalf of His Imperial Japanese Majesty's Government against all vessels which may attempt to violate the blockade.

Given on board His Imperial Japanese Majesty's ship ..... at ..... this ..... day of ....., 19...

(Signed) ....,

Commander-in-Chief (Admiral in Command) of ..... Squadron.

FORM II. (Referred to in Art. LXIV.)

WARNING OF BLOCKADE.

I have visited the ..... vessel, the ....., this day by the order of Captain ....., of His Imperial Japanese Majesty's ship, ..., and warned that ....., from ....., in latitude ....., longitude ....., to ....., in latitude ....., longitude ....., is under blockade.

Dated this .... day of ....., 190...

Latitude ....., longitude .....

....,

His Imperial Japanese Majesty's Ship .....

FORM III. (Referred to in Art. LXIV.)

WARNING OF HOSTILITIES.

I have visited the ..... vessel, the ....., this day by the order of Captain ....., of His Imperial Majesty's ship ..... and warned that the state of war has existed and exists between the Empire of Japan and the Empire of .....

Dated this .... day of ....., 190...

Latitude ....., longitude .....

....,

His Imperial Japanese Majesty's Ship .....

FORM IV. (Referred to in Art. LXXIV.)

CERTIFICATE CONCERNING SHIP'S PAPERS RECEIVED AT THE TIME OF THE CAPTURE OF THE VESSEL.

Name of the vessel ..... Name of the master ..... I hereby certify:

1. That I was present when His Imperial Japanese Majesty's ship ..... captured the above-mentioned vessel on the .... day of....., 190...

2. That the documents attached, that is, from No. .... to No. .... are all the papers found on board and received at the time of the capture.

3. That they are exactly in the same condition in which they were received, and no change has been made except that they received their numbers.

Dated this .... day of ....., 190...

....,

His Imperial Majesty's Ship .....

FORM V. (Referred to in Art. LXXV.)

CERTIFICATE CONCERNING PAPERS THROWN AWAY (MUTILATED OR THROWN AWAY OR HIDDEN) AT THE TIME OF THE CAPTURE.

Name of the vessel ..... Name of the master ..... I hereby certify:

1. That I was present when His Imperial Japanese Majesty's ship ..... captured the above-mentioned vessel on the .... day of ....., 190...

2. That .... minutes before the capture (or .....), I actually saw at such and such place .... bundles of papers thrown away from a porthole of the above-mentioned vessel; I lowered the boat instantly; and the boat's crew picked up .... bundles of the papers, the other having gone to the bottom (in case papers are mutilated or hidden, state the circumstances).

3. That the papers attached, that is, from No. 1 to No. .... are all the documents picked up at that time, and except they received their numbers they are in the same condition in which they were found, and no change has been made in them.

Dated this .... day of ....., 19...

....,

His Imperial Majesty's Ship .....

FORM VI. (Referred to in Art. LXXVI.)

CERTIFICATE AS TO MONEY AND VALUABLES FOUND ON BOARD THE PRIZE.

The ...., master.

I, the undersigned, holding the rank of ..... in His Imperial Japanese Majesty's navy and commanding his Imperial Japanese Majesty's ship ....., do hereby certify that the following is a correct account of all moneys and valuables found on board the above-named vessel ..... detained by me as lawful prize of war on the .... day of ....., 19...

....

(Here state the several articles, distinguishing whether they were voluntarily given up or were found concealed, and where.)

....,

Commanding His Imperial Japanese Majesty's Ship.

NOTE.—I do hereby declare that on the .... day of ....., 19.., I delivered a copy, signed by myself, of the above certificate to the master of the ..... and that .....

(Here state whether or not the master made any objection, and if he did, what the nature of the objection was.)

Signed this .... day of ....., 190...

....,

Commanding His Imperial Japanese Majesty's ship .....

(A copy of this certificate must in all cases be delivered to the master.)

FORM VII. (Referred to in Art. LXXXIII.)

CERTIFICATE TO BE ISSUED WHEN THE CAPTAIN OF THE MAN-OF-WAR TRANSSHIPPED THE CREW OF A CAPTURED VESSEL TO ANOTHER VESSEL.

The ...., master.

I hereby certify,

1. That Captain ....., of His Imperial Japanese Majesty's ship ....., has captured the above-mentioned vessel on the .... day of ....., 19.., in longitude ....., latitude .....

2. That on the .... day of ....., 19.., the said Captain ..... had transshipped ..... of the crew before he sent the vessel to port where there is a Prize Court.

3. That the reasons for such transshipment of the crew are .....

Dated this .... day of ....., 19...

....,

His Imperial Japanese Majesty's ship ....., Prize Officer.

FORM VIII. (Referred to in Art. LXXXVII.)

CERTIFICATE CONCERNING SALE OF CARGO.

The ...., master.

I hereby certify,

1. That Captain ....., of His Imperial Japanese Majesty's ship ....., has captured the above-mentioned vessel on the .... day of ....., 19.., in longitude ....., latitude .....

2. That on the .... day of ....., 19.., the captain ordered the survey of the cargo.

3. That the document (A) annexed is the report of the board of survey.

4. That as the result of the survey the captain ordered me to take the vessel to ..... port at once and to sell the cargo.

5. That on the .... day of ....., 19.., I transported the cargo to the above-mentioned port and ordered ..... and ....., who are most skilful appraisers, to appraise the goods.

6. That before appraising the above mentioned ..... and ..... swore that they would discharge their duties impartially, and the document (B) annexed are their written oath.

7. That the documents (C) annexed are the appraisement of ..... and .....

8. That on the .... day of ....., 19.., I gave order to sell the goods by auction, and the document (D) annexed is the advertisement made at .....

9. That on the .... day of ....., 19.., the auction advertised was held, and I (Japanese consul, or Japanese officer residing in the

neighbourhood of the place where the sale was made) was present and witnessed the sale.

10. That the document (E) annexed is the account of sale given me by ....., the goods having been sold to .....

11. That on the .... day of ....., 19.., I have turned over to ..... the sum of yen ....., mentioned in the accounts of sale.

Dated this .... day of ....., 19...

....,

His Imperial Japanese Majesty's ship ....., Prize Officer.

FORM IX. (Referred to in Art. XC.)

CERTIFICATE TO BE ISSUED WHEN A CAPTURED VESSEL IS SENT TO A NEUTRAL PORT (THE NEAREST JAPANESE PORT).

The ...., master.

I hereby certify,

1. That Captain ....., of His Imperial Japanese Majesty's ship ....., has captured the above-mentioned vessel on the .... day of ....., 19.., in longitude ....., latitude .....

2. That on the .... day of ....., 19.., the said captain ordered survey of the vessel.

3. That the document (A) annexed is the report of the board of survey.

4. That as the result of the survey the captain ordered me to navigate the vessel to .....

5. That in accordance with the above order I reached ..... on the .... day of ....., 19.., and turned over the vessel to .....

Dated this .... day of ....., 19...

....,

His Imperial Japanese Majesty's Ship ....., Prize Officer.

FORM X. (Referred to in Art. XCIII.)

INVENTORY OF THE STORES, FURNITURE, AND CARGO OF THE PRIZE.

The ...., master.

I, ..., holding the rank of ..... in His Imperial Japanese Majesty's navy, and the prize officer in charge of the above-named vessel, do hereby certify that the following is a correct inventory of the stores, furniture, and cargo of the said vessel, so far as the said can be ascertained without disturbing the stowage .....

Signed this .... day of ....., 19...

....

NOTE.—I do hereby declare that on the .... day of ....., 19.., I delivered a copy, signed by myself, of the above inventory to the master of the ....., and that ..... (Here state whether or not the master made any objection, and, if he did, what the nature of the objection was.)

Signed this .... day of ....., 19...

....

(A copy of this inventory must be delivered to the master.)

FORM XI. (Referred to in Art. XCV.)

CERTIFICATE CONCERNING SHIP'S PAPERS RECEIVED (MUTILATED AND THROWN AWAY OR HIDDEN) DURING THE VOYAGE.

The ...., master.

I hereby certify:

1. That on the .... day of ....., 19.., I was ordered to navigate the above-mentioned vessel to ..... for adjudication.

2. That during the voyage, on the .... day of ....., 19.., I received from the master of the vessel the documents annexed—that is, from No. 1 to No. ..... (Here circumstances to be noted, if any. Same in the case of mutilation or concealment.)

3. That the above-mentioned documents are all the papers I have received, and they are in the same condition as when received and no change has been made in them, except that I numbered them.

Dated this .... day of ....., 19...

....,

His Imperial Japanese Majesty's Ship ....., Prize Officer.

FORM XII. (Referred to in Art. XCVII.)

CERTIFICATE TO BE ISSUED WHEN THE CREW OR CARGO OF A CAPTURED VESSEL IS LANDED.

The ...., master.

I hereby certify:

1. That on the .... day of ....., 19.., I received orders to navigate the above-mentioned vessel to ..... for adjudication.

2. That during the voyage I landed (transshipped) from the vessel the following:

.... } Goods or persons landed (transshipped) and the place
.... } where landed.

3. That the reasons for landing or transshipping are .....

Dated this .... day of ....., 19...

....,

His Imperial Japanese Majesty's Ship ....., Prize Officer.

APPENDIX VI.

COMPLETE LIST OF VESSELS CAPTURED, ORDER KEPT IN THE DATES OF CAPTURE.

Name.	Nationality.	Kind of Ship.	Tonnage.	Cargo.	Date and Place of Capture.	Prize Court and Its Decision.	Higher Prize Court.
Ekaterinoslav...	Russian.	Steamer.	Reg. 3,291. Gr. 5,627.	Small arms and 17 other goods.	2/63/7; near Fusan, Korea.	Sasebo; condemned.	2 cases of appeal for ship and cargo; rejected.
Mukden.....	Russian.	Steamer.	Reg. 881. Gr. 1,567.	10,000 rubles, rice and over 50 other goods.	2/6/37; Fusan, Korea.	Sasebo; condemned.	5 cases of appeal for cargo and ship; rejected; 1 case dismissed.
Rossia.....	Russian.	Steamer.	Reg. 1,500. Gr. 2,312.		2/7/37; near Kiushin Rock, Korea.	Sasebo; condemned.	Rejected.
Argun.....	Russian.	Steamer.	Reg. 1,397. Gr. 2,457.	311 rubles of Russian money.	2/7/37; near Phalkupho, Korea.	Sasebo; condemned.	Rejected.
Helmes.....	Norwegian.	Steamer.	Reg. 849. Gr. 1,358.	Coal.	2/9/37; off P. Arthur, N. 38° 24′ and E. 121° 48′.	Sasebo; released.	

Manchuria.....	Russian.	Steamer.	Reg. 3,923. Gr. 6,193.	Canned food, rice, tea and over 200 other goods.	2/9/37; 18 miles SE. of P. Arthur.	Sasebo; condemned.	8 cases of appeal for ship and cargo; rejected.
Nikolai.....	Russian.	Steamer; whaler.	Reg. 49. Gr. 123.	6,500 pieces of Korean coin.	2/10/37; N. 35° 7′ and E. 129° 15′.	Sasebo; condemned.	Rejected.
Mihail.....	Russian.	Steamer employed for capture and preparation of whales.	Reg. 2,144. Gr. 3,461.	Whale oil, salt and 6 other goods.	2/10/37; N. 35° 10′ and E. 129° 20′.	Sasebo; condemned.	Rejected.
Alexander.....	Russian.	Steamer, carries provisions to the company's whaler.	Reg. 56. Gr. 261.	Whale fat, salt and fresh whale flesh.	2/10/37; Idsuhara, Tsushima.	Sasebo; condemned.	Rejected.
Lesnik.....	Russian.	Sailing vessel; whaler.	Reg. 81. Gr. 87.	Salt, duck sacks and empty casks.	2/10/37; Nagasaki.	Sasebo; condemned.	Rejected.
Kotic.....	Russian.	Steamer.	Reg. 271. Gr. 399.		2/10/37; Yokohama.	Yokosuka; condemned.	Rejected.
Manchuria.....	Russian.	Steamer.	Reg. 1,888. Gr. 2,981.	Liquors and provisions.	2/17/37; Nagasaki.	Sasebo; condemned.	Rejected.
Juriade.....	Russian.	Steamboat.	Reg. 5. Gr. 10.		2/17/37; Nagasaki.	Sasebo; condemned.	
Nadejda.....	Russian.	Sailing vessel.	Reg. 67. Gr. 68.		2/17/37; Hakodate.	Yokosuka; condemned.	

LIST OF VESSELS CAPTURED.—*Continued.*

Name.	Nationality.	Kind of Ship.	Tonnage.	Cargo.	Date and Place of Capture.	Prize Court and Its Decision.	Higher Prize Court.
Bobrick.....	Russian.	Sailing vessel, carries provisions and fishermen to fishing grounds and take back caught fish, etc.	Reg. 119. Gr. 125.		2/17/37; Hakodate.	Yokosuka; condemned.	Rejected.
Jarrica.....	Russian.	Steamboat. 28 ft. 9 in. long; 8 ft. 1in.broad; 5 ft. 6 in. deep.	12 or 13 tons.		4/13/37; Hakodate Dock Co.	Yokosuka; condemned.	Rejected.
Aggi.....	Norwegian.	Steamer.	Reg. 1,944. Gr. 3,046.	Coal.	6/7/37; Nagasaki.	Sasebo; released.	
Hsi-ping.....	British.	Steamer.	Reg. 1,266. Gr. 1,981.	Rice, flour, liquors, silver coin and over 300 other goods.	7/14/37; N. 37° 34′ 30″ and E. 122° 29′.	Sasebo; ship and cargo except contraband released.	5 cases of appeal for condemned goods; rejected.
Pei-ping.....	Chinese.	Steamer.	Reg. 326. Gr. 500.	Rice, flour, liquors, silver coin and over 80 other goods.	7/17/37; N. 37° 35′ and E. 122° 23′.	Sasebo; ship and cargo except contraband released.	7 cases of appeal for condemned goods; rejected.

George.....	French.	Steamer.	Reg. 111. Gr. 179.		8/19/37; off Laotishan, Liaotung Peninsula.	Sasebo; condemned.	Rejected.
Shishan.....	British.	Steamer.	Reg. 845. Gr. 1,700.	Cows, sheep and provisions.	10/7/37; Newchwang.	Sasebo; released.	
Fu-ping.....	German.	Steamer.	Reg. 1,051. Gr. 1,393.	67,000 rubles, ammunition, arms, boiled beef and over 10 other goods.	10/12/37; about 10 miles N. of N. Huang Cheng I.	Sasebo; condemned.	Appeal for cargo rejected no appeal for ship.
Veteran.....	German.	Steamer.	Reg. 819. Gr. 1,198.	Fur overcoats, salt, beef, canned meat and over 10 other goods.	11/19/37; N. 38° 6′ 30″ and E. 122° 40′ 30″.	Sasebo; condemned.	2 cases of appeal; rejected.
Nigretia.....	British.	Steamer.	Reg. 1,530. Gr. 2,367.	70,000 boxes of kerosene oil.	12/19/37; N. 35° 18′ and E. 129° 50′.	Sasebo; condemned.	3 cases of appeal; rejected.
King Arthur....	British.	Steamer.	Reg. 1,047. Gr. 1,415.		12/21/37; off Chefoo, China.	Sasebo; condemned.	Rejected.
Roseley.....	British.	Steamer.	Reg. 2,832. Gr. 4,369.	6,462 tons of coal.	1/12/38; N. 36° 18′ and E. 130° 52′.	Sasebo; condemned.	2 cases of appeal; rejected.
Lethington.....	British.	Steamer.	Reg. 2,853. Gr. 4,420.	6,495 tons of coal.	1/12/38; about 18 miles W. of Okinoshima.	Sasebo; condemned.	2 cases of appeal; rejected.
Wilhelmina.....	Dutch.	Steamer.	Reg. 2,762. Gr. 4,269.	6,897 tons of coal.	1/16/38; about 15 miles E. of Makinoshima, Korea.	Sasebo; condemned.	Rejected.
Bawtry.....	British.	Steamer.	Reg. 1,542. Gr. 2,406.	Flour, steel bars and over 500 other goods.	1/17/38; N. 34° 58′ and E. 130° 28′.	Sasebo; condemned.	4 cases of appeal; rejected.
Oakley.....	British.	Steamer.	Reg. 2,455. Gr. 3,797.	5,893 tons of coal.	1/18/38; N. 34° 22′ and E. 129° 55′.	Sasebo; condemned.	2 cases of appeal; rejected.

LIST OF VESSELS CAPTURED.—*Continued.*

Name.	Nationality.	Kind of Ship.	Tonnage.	Cargo.	Date and Place of Capture.	Prize Court and Its Decision.	Higher Prize Court.
Burma.....	Austrian.	Steamer.	Reg. 1,974. Gr. 3,070.	4,106 tons of coal.	1/25/38; near Shiokubi Cape.	Yokosuka; condemned.	2 cases of appeal; rejected.
M. S. Dollar....	British.	Steamer.	Reg. 2,674. Gr. 4,216.	Hay, barley and oats.	1/27/38; near Tappi Cape.	Yokosuka; condemned.	2 cases of appeal; rejected.
Wyefield.....	British.	Steamer.	Reg. 2,088. Gr. 3,234.	Hay, barley and oats.	1/30/38; Strait of Tsugaru.	Yokosuka; condemned.	2 cases of appeal; rejected.
Siam.....	Austrian.	Steamer.	Reg. 1,991. Gr. 3,159.	4,100 tons of coal.	1/31/38; near Yerimo Cape.	Yokosuka; condemned.	2 cases of appeal; rejected.
Eastry.....	British.	Steamer.	Reg. 1,924. Gr. 2,998.	Coal.	2/7/38; Strait of Tsugaru.	Yokosuka; released.	
Paros.....	German.	Steamer.	Reg. 1,514. Gr. 2,398.	Copper, iron nails, iron pipes and over 80 other goods.	2/10/38; near Itsurup Channel.	Yokosuka; condemned.	Rejected.
Apollo.....	British.	Steamer.	Reg. 2,463. Gr. 3,829.	5,600 tons of coal.	2/14/38; Iturup Str., Hokkaido.	Yokosuka; condemned.	Rejected.
Scotsman.....	British.	Steamer.	Reg. 1,064. Gr. 1,679.	20,000 bags of Saigon rice.	2/14/38; near Shiokubi lighthouse, Tsugaru Str.	Yokosuka; condemned.	2 cases of appeal; rejected.
Sylviana.....	British.	Steamer.	Reg. 2,714. Gr. 4,186.	6,534 tons of coal.	2/19/38; N. 33° 35′ and E. 128° 25′.	Sasebo; condemned.	2 cases of appeal; rejected.
Forderham.....	British.	Steamer.	Reg. 1,949. Gr. 3,019.	4,000 tons of coal.	2/19/38; N. 34° 41′ and E. 129° 3′.	Sasebo; condemned.	2 cases of appeal; rejected.
Severus.....	German.	Steamer.	Reg. 2,133. Gr. 3,307.	3,845 tons of coal.	2/23/38; Shibetoro.	Yokosuka; condemned.	
Romulus.....	German.	Steamer.	Reg. 1,652. Gr. 2,597.	3,400 tons of coal.	2/26/38; near the str. Tsugaru.	Yokosuka; condemned.	

Easby Abbey....	British.	Steamer.	Reg. 1,900. Gr. 2,963.	4,500 tons of coal.	2/27/38; near Iturup Island.	Yokosuka; condemned.	2 cases of appeal; rejected.
Vegga.....	Swedish.	Steamer.	Reg. 1,637. Gr. 2,561.	3,616 tons of coal.	3/3/38; N. 34° 10′ and E. 127° 43′.	Sasebo; condemned.	2 cases of appeal; rejected.
Venus.....	British.	Steamer.	Reg. 2,303. Gr. 3,557.	5,200 tons of coal.	3/4/38; near Iturup Channel.	Yokosuka; condemned.	Rejected.
Aphrodite.....	British.	Steamer.	Reg. 2,568. Gr. 3,948.	5,600 tons of coal.	3/6/38; near Iturup Channel.	Yokosuka; condemned.	Rejected.
Saxon Prince...	British.	Steamer.	Reg. 2,235. Gr. 3,471.	Railway materials.	3/10/38; N. 34° 13′ and E. 130° 20′.	Sasebo; released.	
Tacoma.....	American.	Steamer.	Reg. 1,689. Gr. 2,811.	Salt beef, iron bars and machine appurtenances.	3/14/38; about 40 miles SW. of Shibetonitara Cape.	Yokosuka; condemned.	Rejected.
Habarton.....	British.	Steamer.	Reg. 2,101. Gr. 3,264.	4,900 tons of coal.	3/18/38; N. 45° 13′ and E. 149° 6′.	Yokosuka; condemned.	2 cases of appeal; rejected.
Industrie.....	German.	Steamer.	Reg. 21. Gr. 160.		3/28/38; near Kadok Island, Korea.	Sasebo; condemned.	Rejected.
Henry Bolckow..	Norwegian.	Steamer.	Reg. 639. Gr. 1,005.	18,190 sacks of American flour.	4/7/38; N. 45° 10′ and E. 149° 29′.	Yokosuka; condemned.	Appeal for ship rejected; no appeal for cargo.
Lincluden	British.	Steamer.	Reg. 1,764. Gr. 2,746.	Barley.	5/16/38; N. 33° 10 and E. 127° 37′.	Sasebo; released.	
Quang-nam.....	French.	Steamer.	Reg. 710. Gr. 1,389.		5/16/38; N. of Kosei Island, Formosa.	Sasebo; condemned.	Rejected.
Aryol.....	Russian.	Steamer; RedCross Hospital Ship.	Reg. 7,663. Gr. 9,085.	Money.	5/27/38; Miura bay, Tsushima.	Sasebo; condemned.	

LIST OF VESSELS CAPTURED.—*Continued.*

Name.	Nationality.	Kind of Ship.	Tonnage.	Cargo.	Date and Place of Capture.	Prize Court and Its Decision.	Higher Prize Court.
Lydia.....	German.	Steamer.	Reg. 447. Gr. 753.	Salt, band iron, machine oil and over 90 other goods.	7/26/38; Naha.	Sasebo; condemned.	2 cases of appeal; rejected.
Australia.....	American.	Steamer.	Reg.1,937. Gr. 2,755.	Flour and other provisions, cloths, etc.	8/13/38; Petropavlovsk, Russia.	Yokosuka; condemned.	Rejected.
Antiope.....	British.	Sailing.	Reg. 1,365. Gr. 1,486.	1,800 tons of coal.	8/13/38; N. 53° 52′ and E. 141° 29′.	Yokosuka, ship released; cargo condemned.	Ship condemned; appeal for cargo rejected.
Montara.....	American.	Steamer.	Reg. 1,695. Gr. 2,562.	Steamboat, small transports, furs and 4 other goods.	8/16/38; Nicoliski anchorage. Behring I., Commanderski Group.	Yokosuka; condemned.	Rejected.
Barracouta.....	American.	Steamer.	Reg. 1,749. Gr. 2,152.		9/16/38; North bay, Sagalien.	Yokosuka; released in accordance with Imperial ordinance No. 228 of the 1st, 11th month, 38th year.	
Arnfrid.....	Norwegian.	Steamer.	Reg. 811. Gr. 1,307.		10/7/38; 12 miles W. of Mishima, Tsushima.	Sasebo; released in accordance with Imperial ordinance No. 228 of the 1st, 11th month, 38th year.	

INDEX.

Administration of
  Manchuria, 252
  Sakhalin, 225
Advertisement of vessels and cargoes, 567
Affair
  The *Askold*, 429
  The *Daijin Maru*, 337
  The *Independent*, 354
  The *Mandjur*, 418
  The *Ratstoropny*, 444
Aggi, Case of the, 750
American protection
  of Japanese, 42
  Trading Company, 267
Aphrodite, Case of the, 651
Armistice
  of Manchuria, 219
  Naval protocol of, 222
  in North Korea, 224
  at Port Arthur, 221
  Protocol of, 218
Arrêté de Napoleon, 26
Arufrid
  Release of, 754
Arugun
  Case of the, 625
Asylum
  Lunatic, 246
Australia
  Case of the, 625

Bawtry, Case of the, 659
Barracouta, Release of the, 754
Belligerents in
  neutral ports, 459
Blockade
  General statement of, 359
Blockade
  Hospital liner to the ports under, 370
  Medical staffs to the ports under, 361
  Observation on, 373
  runners, 371
Board of Trade, 2
Bobrick, Case of the, 580
Bombardment of
  Hospital, 195
  Kaiping, etc., 408
  Sea Coasts, 407
  San-shan, 411
Booty in
  Manchuria, 260
  Port Arthur, 218
Bureau of Information for prisoners
  History of, 114
  Rolin's remark on, 115

Capture made before the war, 582
Capitulation of Port Arthur, 209
Case
  The *Crusader*, 356
  The *Eastry*, 358
  The *Industrie*, 397
  number of, tried before Japanese Prize Courts, 539
  Procedure of, 565
  The *Prometheus*, 340
  Reception of, 565
  (as to cases brought before Japanese Prize Courts, see contents)
Catholic
  Protection of, by Japan, 38
Centennial, Case of the, 754

Chemulpo incident, 462
Chinese costumes, wearing of, by Russians, 174
Churches, Protection of, 38
Claims for damages, 355
Combatants
General statement of, 89
Hague convention relating to, 89
Irregular, 180
Japanese principles on, 90
Russian principle, 92
Contraband of war
General statement, 491
Bean cake as, 515
Cotton as, 524
Goods as, 652
Japanese attitude on, 491
Kerosene oil, 523
Persons as, 467, 639
Rice as, 340, 520
Russian attitude on, 496
Tea as, 520
Convicts in Sakhalin, 236
Correspondents and correspondents' ship, 386–406
Crews
Examination of, 566
Hague Convention on, 140
The *Lena's*, 482
Release of, 139, 568

Days of Grace
American practice on, 61
Author's view on, 65
Hague Convention relating to, 63
Japanese ordinance, 64
Lawrence on, 65
Scott's view on, 64
of enemy subjects, 25–38
of enemy vessels, 6–69
Decisions of Prize Courts (see contents of Part V)
Declaration of War
Hostilities without, 3–5
Japanese, 6
Russian, 7
Diary of the Russo-Japanese war, 761
Dollar, Case of the *M. S.*, 562, 664
Dumdum bullets
use of, by Russians, 173, 179

Eastern Railroad Company
Nature of, 575
Eastry, Case of the, 738
Ekaterinoslav, Case of the, 23, 582
Enemy
Trading with, 82
Means of injuring, 155
vessels, 573
Execution of decision of Prize Courts, 571
Exile
Political, 234

Fee and stamps for prize procedure, 571
Foreigners and war taxes, 70
Forests in Sakhalin, 240
Franco-Prussian War, 28

Geneva Convention, 134
George, The case of the, 710
Grotius, 2
Gustavus Adolphus, 2

Hague Convention
Application of Art. LVI of, 244
on bombardment, 413
on relations to combatants, 89
on days of grace, 63
on prisoners and religion, 146
on wills of prisoners, 135
Hans Wagner, The case of the, 754
Helmes, Case of the, 752
Henry Bolckow, Case of, 671
Hostile employment
of vessels, 625
Hospital
Countess Schouvaloff, 265
Field, 135, 166

Hospital
Floating, 375
Military, 133
Naval, 133
Protection of Charity, 245
Red Cross, 195
in Manchuria, 263
Hsiping, Case of the, 745

Incident
Chemulpo, 462
Daijin Maru, 337
Okinoshima, 292
bearing on Prize Law, 337
Industrie, Case of the, 733
Inspection of goods, 567
letters, 568

Japanese attitude
on contrabands, 490
towards Russians in Japan, 29
Juriady, Case of, 591

King Arthur, Case of the, 721
Korean neutrality, 575
Kotic, Case of the, 503
Kow-loon, Release of the, 754

Laws and customs of
land warfare, 89
naval warfare, 275
Lydia, Case of the, 674

Mail steamer, 571–580
Manchuria
Administration of, 252
Case of the, 544, 551, 596
Citizens of third Powers in, 226
Historical and religious buildings in, 263
Hospitals in, 263
Occupation of, 250
Requisition and booty in, 260
Speech by Baron Komura, 756
Mandjur, The affairs of, 418
Manifesto, The Russian, 9
Means of injuring enemy, 155
Memorandum of
Japanese Government concerning the *Ryeshitelni*, 44
Japanese prisoners in Russia, 96
seven professors, 759
Montara, The case of the, 633
Mukden, Case of the, 541, 543, 559, 563, 598
Museums in Sakhalin, 248

Nadajda, Case of the, 604
Napoleon, arrêté de, 26
Neutrality, 417
Neutral ports
Belligerents in, 259
Warships in, 417
Nigretia, Case of the, 467, 551, 640
Non-combatants
Delivery of, 140
in Port Arthur, 203

Occupation of
Manchuria, 250
Sakhalin, 225
Orphanage
Protection of, 224
Outbreak of war
Author's view on, 14
Opinion of Prof. Westlake on, 6
Roman practice on, 1
Russian protest on, 9
The Second Hague Convention on, 5

Parole, Breach of, 467
Peiping, Case of the, 749
Petition
by an attorney other than a Japanese, 543
in foreign languages, 562
by a party not in interest, 540
for release of vessels, 557
by telegraph, 544
for temporary attachment of a prize, 559
Petroleum oil in Sakhalin, 242

Priests in Sakhalin, 238
Principles of Japanese Prize Courts, 543
Prison Barracks
  General statement of, 113
  Table of, 114
Prisoners of war
  Crew of merchantmen as, 138
  Bureau of information of, 114
  Delivery of, 142
  Labour of, 124
  Memorandum made by Japanese, 96
  Offence of, 142
  Parole of Russians, 107
  Relation between labour and support, 126
  Religion of, 146
  Report of Mr. Smith on Japanese, 95
  Sick and wounded, 132
  Support and pay for, 123
  Table of the offence of, 131
  Table of, in private houses, 108
  Treatment of, in Japan, 94
  Treatment of, in Russia, 102
  Wearing swords by, 128
Prize Courts
  Organisation of, 526
Prohibition of export, 82
Property
  Protection of enemy's, 27
  Russian soldiers', 118
  State and private, 239
Protection of
  Catholics, 38
  Citizens of third Powers, 245
  Enemy's property, 27
  Japanese by the United States, 42

Quang-nam, The case of the, 735

Red Cross Flag
  Abuse of, 180
  Firing on, 155
  Hospital, 195
Regulations for
  booty, 261
  captures at sea, 778
  clearing a field after battle, 152
  crews, 141
  destruction of vessels (Japan), 334
  destruction of vessels (Russian), 334
  naval war correspondents, 395
  Prisoners' free walking, 104
  private shops, 234
  war correspondents, 303
Religion and prisoners, 146
Released vessels, by
  decisions, 739
  special favour, 753
Requisition in Manchuria, 260
Resnick, Case of the, 540
Rincluden, Case of the, 741
Russia, Case of the, 557
Russian
  attitude towards Japanese, 33
  principle concerning contraband, 495
  outrages, 169
  warships at Batavia, 459
  warships at Chefoo, 438
  warships at Kiaochow, 447
  warships at Manila, 452
  warships at Saigon, 453
  warships at San Francisco, 455
  warships at Shanghai, 418
Ryeshitelni, Case of the, 438

Sado Maru, The incident of the, 292
Sakhalin, The occupation of, 225
Sale of
  vessels, 495
  war vessels, 487
Saxon Prince, Case of the, 747
School in Sakhalin, 248
Scotsman, Case of the, 682
Severus, Case of the, 692
Shishan, Case of the, 742

Sick and wounded, 132
Sinking of the
merchantmen, author's observation on, 331
Goyo Maru, 287
Haginoura Maru, 287
Han-yei Maru, 301
Hipsang, 321
Hitatchi, 292
Ikona, 325
Jizai and the *Takashima*, 296
Kinshiu, 289
Kei-sho, 300
Knight Commander, 310
Nakonoura Maru, 284
Old Hamia, 326
St. Kilda, 324
Thea, 321
Spy
Chinese, 187
Russian, 185
Statute of Staples, 26
Stuve, The release of the, 754
Surrender of
Port Arthur, 209
Sakhalin, 227
Suyematsu, on the treatment of the killed, 148

Tacoma, Case of the, 694
Thalia, Case of the, 605
Trading with enemy, 82
Treaty of
1795, 27
peace, 774
Treatment of
the killed, 148
prisoners, 94
population of occupied territory, 231
Trial of prize cases, 570

Uniform of combatants, 176
United States, Protection of Japanese, 42
Un-neutral services, 733

Vegga, Case of the, 703
Vessels
captured by the Japanese navy, 537
employed by enemy, 625
Sale of, 485
Veteran, Case of the, 714
Vickers, Prof., on war taxes, 75
Volunteer, Fleet Company, 582

War
correspondents, 386
opens when intention is expressed, 571, 580
opens by declaration, 582
State of, 571–580
taxes, 70
Westlake, Prof., on The Hague Convention, 6, 330, 385, 414
Wills of prisoners, 135
Withdrawal of Japanese from Russia, 33
Wounded, Sick and, 132

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